



**Protecting Boat Owners
and Purchasers from Fraud**

January 2018



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Protecting Boat Owners and Purchasers from Fraud

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January 25, 2018

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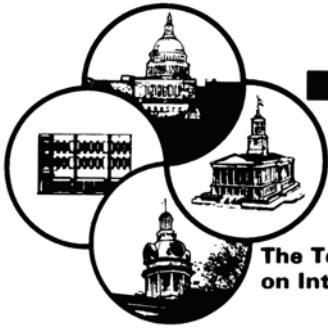
Ladies and Gentlemen:

Transmitted herewith is the Commission's report studying the creation and implementation of a boat titling system in Tennessee pursuant to Public Chapter 179, Acts of 2017. The report includes recommendations to establish a boat titling system and to require boat dealers to meet certain minimum licensing requirements similar to motor vehicle and RV dealers, including background checks and surety bonds. The report was approved January 25, 2018, and is hereby submitted for your consideration.

Respectfully yours,

Senator Mark Norris
Chairman

Cliff Lippard
Executive Director



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard 
Executive Director

DATE: 25 January 2018

SUBJECT: Public Chapter 179, Acts of 2017 (Boat Titling)—Final Report for Approval

The attached Commission report is submitted for your approval. It was prepared in response to Public Chapter 179, Acts of 2017, which directs the Commission to perform a study on the creation and implementation of a boat titling system in Tennessee. Staff has continued to refine the information and recommendations presented in the report to address questions and feedback from members at the December 2017 meeting.

The main recommendation of the report remains unchanged:

- **Based on the benefits of boat titling for owners and buyers, the titling laws in other states, and the concerns raised by stakeholders, Tennessee should implement a boat titling system for motorized and sail-powered boats that are either larger or likely to be more powerful. Similar to Michigan, Tennessee could consider limiting titling both to boats that have a permanently attached engine and to boats that are at least 20 feet long, excluding human-powered watercraft.**

But in response to members' concerns that county clerks, the Tennessee Wildlife Resources Agency (TWRA), and the Department of Revenue have not reached a consensus regarding which government entity should administer a potential boat titling system, the draft report's recommendation that boat titling be administered by the TWRA and the county clerks has been replaced in the final report with the following recommendation:

In light of the lack of consensus regarding how a potential boat titling system should be administered in Tennessee, the TWRA, the county clerks, and the Department of Revenue should work together to determine an effective and agreed upon way to administer boat titling in the state. We request that they report back to the Commission in December 2018.

Staff has included additional information in the final report on North Carolina to provide an example of a state that administers boat titling without the assistance of local government and new information about the effect of a boat titling requirement on the recording taxes and filing fees that the Tennessee Secretary of State's office collects for UCC-1 financing statements. Language was also added to clarify that boat titling would help prevent some but not all fraud.

The other two recommendations from the draft report remain unchanged in the final report. They are:

- **To avoid the significant administrative burdens that would occur if titling requirements were applied retroactively to all existing boats, Tennessee should also consider phasing in any new titling system by limiting it either to boats manufactured at least one year after the law's effective date or to boats sold or transferred at least one year after the law's effective date.**
- **Tennessee should provide consumers with greater protection from frauds perpetrated by unscrupulous boat dealers and prevent those individuals from becoming dealers by requiring boat dealers to meet minimum licensing requirements similar to motor vehicle and RV dealers, including background checks and surety bonds.**

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Summary and Recommendations: Protecting Boat Owners and Purchasers from Fraud

A Hardin County boat dealer's scheme to defraud boat owners and buyers made headlines after it was uncovered in 2015. The dealer lured victims by offering free storage for recently purchased boats. Then, without the owner's permission, she would sell the boats to unsuspecting buyers, repeating the same scam with the same boats multiple times. Fortunately, schemes like this are rare, and in general, boat theft does not appear to be a pervasive problem in Tennessee. Only 133 boats valued at over \$1,000 were reported stolen in the state in 2016—far less than 1% of Tennessee's 254,000 registered boats.

While the overall effect of theft and fraud on boating in Tennessee appears small, the victims in these cases can suffer sizable financial harm. For example, the scam in Hardin County resulted in more than \$660,000 in total property loss for the 14 reported victims. Some of those defrauded have argued that the scam could have been prevented if boats were issued titles similar to those issued for motor vehicles in Tennessee. In response, the General Assembly passed Public Chapter 179, Acts of 2017, directing the Commission to study the creation and implementation of a boat titling system in Tennessee (see appendix A). Although federal documentation—which provides similar protections to a state-issued title—is available for larger recreational boats in all states, Tennessee is one of only 13 states that don't currently offer state-issued boat titles. While titling boats would not be a cure-all, it would benefit boat owners and buyers and provide some protections, which could be supplemented by requiring boat dealers to meet minimum licensing requirements, similar to those already required of all motor vehicle and recreational vehicle dealers in Tennessee.

The protections and benefits of titling boats are the same as those of titling motor vehicles. In general, a title is beneficial for personal property that is expensive, mobile, relatively common, and subject to theft and fraudulent sale. Certificates of title provide potential buyers with evidence of ownership and note information about any unpaid liens. Having access to this information makes it easier for buyers to confirm whether an individual rightfully owns property he is selling, thereby reducing the likelihood that buyers unknowingly purchase stolen property. Access to a title also makes it easier for buyers to confirm that any preexisting liens have been satisfied prior to transfer of ownership. In addition to these benefits, if Tennessee were to implement boat titling, it could marginally reduce the cost of financing for buyers who take out loans to purchase their boats. Savings would depend on the size of the loan and would generally be greater for larger loans.

Tennessee is one of only 13 states that don't currently offer state-issued boat titles.

Several states limit boat titling to both larger and more powerful boats by setting minimum requirements based on length and method of propulsion.

Although stakeholders interviewed expressed general support for implementing a boat titling system in Tennessee, several were concerned that it could require many smaller, inexpensive boats to be titled—including relatively low-horsepower motorboats with outboard engines, such as jon boats. For example, if Tennessee were to adopt the same criteria for titling boats as it uses for registering them, then all motorized and sail-powered boats would need titles. This would include not only jon boats but also one or two-person sailboats. Currently, five states use titling criteria this expansive for both motorized and sail-powered boats, though another 16 use it for motorized boats alone while exempting at least some sailboats from titling.

Michigan is one of several states that limit titling to both larger and more powerful boats by setting minimum requirements based on length and method of propulsion. In Michigan, boats with permanently attached engines—which tend to be more powerful—must be titled regardless of length. But all other boats, including sailboats and motorboats without permanently attached engines, require titles only if they are at least 20 feet long. Idaho and Pennsylvania use similar criteria to differentiate titling requirements for motorized boats with inboard engines from requirements for those with outboard engines, though Pennsylvania, unlike Michigan and Idaho, does not require a title for any sailboat. Among other states that limit titling based on length, minimum requirements for sailboats range from eight feet in California to 19.5 feet in Connecticut while those for motorized boats range from 10 feet in New Mexico to 17 feet in Iowa. Three states also set minimum horsepower requirements for titling motorized boats that don't meet minimum length requirements, and seven issue separate titles for at least some outboard motors.

Based on the benefits of boat titling for owners and buyers, the titling laws in other states, and the concerns raised by stakeholders, Tennessee should implement a boat titling system for motorized and sail-powered boats that are either larger or likely to be more powerful. Similar to Michigan, Tennessee could consider limiting titling both to boats that have a permanently attached engine and to boats that are at least 20 feet long, excluding human-powered watercraft. This would mean that jet skis, which have permanently attached motors, would have to be titled, but any sailboats and jon boats less than 20 feet in length would not. All human-powered watercraft, including canoes, kayaks, and paddleboats, would also be exempt.

To avoid the significant administrative burdens that would occur if titling requirements were applied retroactively to all existing boats, Tennessee should also consider phasing in any new titling system by limiting it either to boats manufactured at least one year after the law's effective date or to boats sold or transferred at least one year after the

law’s effective date. As an example of the former, Connecticut passed boat titling requirements in 2014 that became effective in 2016 but apply only to boats with a manufacture date of 2017 or later. Seven additional states similarly exempt boats manufactured before a certain date from titling requirements. Two other states, North Carolina and West Virginia, instead exempt boats sold or transferred before a certain date from titling requirements. In interviews and when discussing prior boat titling legislation, stakeholders in Tennessee have expressed support for limiting titling to newly manufactured boats, but some, including representatives for county clerks, have raised concerns about titling boats based on a specified date of sale or transfer because it could require titling older boats sold or transferred without documentation of prior ownership.

Tennessee could administer a boat titling system in several ways, using existing government agencies. Past legislation in Tennessee has considered housing boat titling in either the Tennessee Wildlife Resources Agency (TWRA), which already administers boat registration, or the same agency that handles motor vehicle titling, which is currently the Department of Revenue. Of the 37 states that have boat titling systems, approximately half administer them through their TWRA equivalent, while the rest administer boat titling through the same agency that handles motor vehicle titling. Four states split the administration of boat titling and boat registration between separate agencies. In the other 33 states that title boats, however, the same agency that administers boat titling also administers boat registration.

Past legislation also proposed having the county clerks act as agents of the state agency charged with administering boat titling and perform duties similar to their current role with motor vehicle titling, including collecting and processing the necessary documentation and fees for titling. This is in part because of the clerks’ experience in such processes, and in part because of the convenience their proximity to citizens statewide provides. In some states, however, boat titling is administered without the assistance of local governments. For example, in North Carolina, boat registration and titling are centrally administered by the state’s Wildlife Resources Commission (NCWRC), and boaters are allowed to register and title their boats at one of more than 400 Wildlife Service Agent locations, such as Wal-Mart, sporting goods stores, and gun shops, or by mailing the application to the NCWRC headquarters.

Consensus has not yet been reached between the TWRA, the Department of Revenue, and the county clerks regarding how the state should administer a new boat titling system. Both the TWRA and the Department of Revenue recommend that boat titling and registration be administered by the same agency, and both have said that TWRA should be that agency. According to information provided by the TWRA and the Department of Revenue,

In most states—33 of the 37 that have boat titling systems—the same government agency that administers boat registration also administers boat titling.

A titling system alone would not prevent all fraud or ensure that victims are compensated for their losses.

the TWRA could implement and administer a new boat titling system at a lower cost to the state. Representatives for county clerks have expressed interest in the clerks performing a similar role with boat titling as they currently do with motor vehicle titling but only if boat titling is housed with the Department of Revenue because of its administrative experience with motor vehicle titling and its effective working relationship with the clerks. **In light of the lack of consensus regarding how a potential boat titling system should be administered in Tennessee, the TWRA, the county clerks, and the Department of Revenue should work together to determine an effective and agreed upon way to administer boat titling in the state. We request that they report back to the Commission in December 2018.**

Although boat titling would provide some protections and benefits for boat owners and buyers and would increase the chances of uncovering fraud, a titling system alone would not prevent all fraud or ensure that victims are compensated for their losses. For example, even if boats were titled, it is possible that the Hardin County boat dealer scam could have occurred as there is no guarantee that all prospective buyers would check for a title prior to payment. When a transaction is being financed with the boat used as collateral, a lender would likely uncover a scam when attempting to note its lien on the title. But an unscrupulous dealer could try to deceive a buyer into paying cash for a boat with false promises to send a title later. In a scam similar to the Hardin County situation in which the same boat is sold multiple times to multiple individuals, only one buyer can retain possession of the boat after the fraud is uncovered, leaving the others to attempt to recover only monetary damages.

Tennessee already takes additional steps beyond titling to protect consumers from unscrupulous motor vehicle and recreational vehicle (RV) dealers. The state requires motor vehicle and RV dealers to be licensed through the state's Motor Vehicle Commission, which sets minimum requirements for obtaining a license (see appendix B). These requirements include but are not limited to passing a criminal background check and providing proof of a surety bond. Surety bonds, in particular, could help victims of dealer scams like the one in Hardin County by ensuring they are able to recover some of their monetary losses up to the amount of the bond. The need to acquire surety bonds could also make it more difficult for unscrupulous individuals to become dealers in the first place because surety bond companies conduct personal credit and background checks to determine not only the cost of the bond but also whether an individual is trustworthy enough to receive a bond.

Currently, no such licensing or bond requirements exist for boat dealers in Tennessee. While victims like those in the Hardin County scam can already sue boat dealers for damages resulting from fraud, there is no guarantee

that a dealer will have any assets to pay judgments against him or her. There appears to be no reason why customers should not be protected by holding boat dealers to the same requirements as other vehicle dealers. Thus, **Tennessee should provide consumers with greater protection from frauds perpetrated by unscrupulous boat dealers and prevent those individuals from becoming dealers by requiring boat dealers to meet minimum licensing requirements similar to motor vehicle and RV dealers, including background checks and surety bonds.** As is done in Maine and Maryland, the amount of the surety bond could be scaled to require larger bonds for larger boat dealers.

The Tennessee Motor Vehicle Commission, which regulates motor vehicle and RV dealers, is a self-supporting entity that collects fees to pay for its operating costs. If the Motor Vehicle Commission is charged with the regulation of boat dealers, it could face difficulties in collecting enough licensing fees from the relatively small amount of boat dealers in the state to sufficiently cover the new program's cost, particularly in the first year of implementation.

There appears to be no reason why customers should not be protected by holding boat dealers to the same requirements as other vehicle dealers.

Boat Titling

In 2015, a Hardin County, Tennessee, boat dealer defrauded multiple victims through a scheme involving the unauthorized sale of the same boat to multiple parties, resulting in more than \$660,000 in total property loss.¹ The dealer provided free boat storage to persuade customers to entrust their recently purchased boats to her, and she would then illegally sell those same boats to other, unsuspecting buyers. Some victims of the scheme initially asserted that a boat titling system might have prevented the fraud.²

Motivated by this event and the desire to protect Tennesseans from the fraudulent sale of stolen boats, the Tennessee General Assembly passed Public Chapter 179, Acts of 2017, which directs the Commission to study the creation and implementation of a boat titling system for Tennessee (see appendix A). In general, certificates of title are government records used to authenticate ownership and document any liens on a particular piece of property; they are issued by the state typically for a one-time fee. Tennessee, like all states, titles motor vehicles such as cars, trucks, motorcycles, and recreational vehicles (RVs), but, it is currently one of only 13 states that do not title boats.³

Implementing a boat titling system in Tennessee would provide a way to verify who owns a boat, decreasing the likelihood of purchasing stolen property and deterring the sale of stolen boats. A title would also make it easier to verify the existence of any preexisting boat liens, which are listed on the title so that a buyer doesn't unwittingly buy a boat with a lien. For those consumers who finance the purchase of a boat, another benefit of a title is that it could potentially reduce the financing costs; the cost for a bank to establish a lien is less for titled property, assuming the titling fees are not set too high. Moreover, boat owners and purchasers could benefit from other protections—such as requiring boat dealers to obtain surety bonds similar to motor vehicle dealers—that would make it more likely for them to recover their money in cases similar to the 2015 Hardin County scandal.

With its many scenic lakes and waterways, boating is an important activity in Tennessee. According to the National Marine Manufacturers Association, recreational boating in Tennessee has an annual economic effect of \$3 billion, supporting over 595 businesses and 15,817 jobs in the state.⁴ The boat manufacturing industry has a significant presence in

Certificates of title are issued by the state typically for a one-time fee.

¹ State v. Carolyn Hopkins, Docket No. 10,113, Circuit Court Records, Hardin County, Tennessee.

² Telephone interview with Dana Capocaccia, CEO, StatLink Systems, May 2, 2017.

³ TACIR staff review of other states' laws.

⁴ "Economic Significance of Recreational Boating in Tennessee." July 2016. Statistics and Research, National Marine Manufacturers Association. Accessed October 30, 2017. www.nmma.org.

In 2016, there were
254,480 boats registered
in Tennessee.

Tennessee, including nine major boat builders and many smaller-scale builders. During the 12-month period ending June 2017, Tennessee ranked 14th among all states in total new powerboat retail sales with 6,789 units, which is a 10.6% increase over the previous year.⁵ In 2016, Tennessee had over 254,000 registered boats, which is the 16th highest amount among the states.⁶

While it does not appear to be a significant problem according to the available crime statistics,⁷ boat theft and the fraudulent transfer of stolen boats can have a devastating effect on those who experience it, as evidenced by the experiences of victims in the Hardin County boat dealer case. While it is not clear whether a boat title alone would have prevented the Hardin County boat dealer's scheme, boat titling and boat dealer regulations would both provide additional safeguards for the boat buying process.

Tennessee requires boats to be registered but not titled.

All 50 states, as required by federal law,⁸ have a boat registration system, and the large majority of states—37—also have a boat titling system. See appendix C for a summary of all 50 states' boat registration and titling requirements. Under current Tennessee law, all motorized and sail-powered boats principally used in the state are required to be registered.⁹ Registration is imposed on boat operators as a recurring fee and is required for the lawful use of the waterways, which are maintained by the government. In 2016, there were 254,480 boats registered in Tennessee. Appendix D shows the types and number of boats registered in 2016. Boat registration does allow boats to be operated on waters of the state, but registration does not act as proof of ownership¹⁰ and is not used to record a lender's lien.

In addition to titling laws in specific states, owners of larger recreational boats in all states have the option to federally document their boat with the United States Coast Guard National Vessel Documentation Center, which acts as a type of national title and registration.¹¹ While federal documentation is a potentially useful alternative to boat titling, it is only available to boats that are five net tons in volume or more (approximately 26 feet or greater in length). In Tennessee, only a small percentage of boats are eligible for federal documentation, and an even smaller percentage take

⁵ Emails from David Dickerson, vice president, state government affairs, National Marine Manufacturers Association, October 20 and 27, 2017.

⁶ Williams 2016.

⁷ 2016 crime statistics provided by the Tennessee Bureau of Investigation and the National Insurance Crime Bureau.

⁸ Code of Federal Regulations, Title 33, Section 173.15.

⁹ Tennessee Code Annotated, Section 69-9-206.

¹⁰ See Tennessee Wildlife Resources Agency's "Application for Boat Certificate of Number," which states on the form that "this is proof of registration, not ownership."

¹¹ United States Code, Title 46, Sections 12102 and 12103.

advantage of it. The size restriction for federal documentation limits it to only 4% of the recreational boats registered in Tennessee in 2016. According to the United States Coast Guard, of that 4%, approximately 2,800, which is 1% of all registered boats in Tennessee, are federally documented.¹²

The Tennessee Wildlife Resources Agency (TWRA), which acts as the state's boating agency, administers the state's boat registration system, including the processing of boat registration applications.¹³ The county clerks assist in the process by providing boat registration forms to citizens and by confirming that the appropriate sales tax has been paid as a prerequisite to registering the boat. TWRA contracts with a third party, Brandt Information Services, to develop, implement, and manage an automated hunting and fishing license sales system and for online boat registration renewals.¹⁴ For an illustrative document on Tennessee's Legal Requirements of Boating, refer to appendix E. Tennessee's boat registration fees vary based on the length of the vessel and duration of the registration period. In Tennessee, boats can be registered for one, two, or three-year periods. See appendix F for a chart showing Tennessee's boat registration fees.

Advocates claim that boat titling has many benefits.

The rationale for a state to issue a boat title is analogous to the issuance of a motor vehicle title. Like motor vehicles, boats are expensive, mobile, and relatively common pieces of property that are subject to theft and the fraudulent transfer of ownership. State certificate of titling statutes were originally established to impede the sale of stolen motor vehicles by providing a way for a potential buyer to identify the property's owner readily. Every state issues motor vehicle titles, and a large majority of states also issue boat titles. Tennessee began issuing motor vehicle titles in 1951¹⁵ to impede the sale of stolen motor vehicles, which is consistent with other states' declared purposes for titling.¹⁶

A title would help safeguard the acquisition and transfer of boats by providing a potential buyer with straightforward, accessible evidence of ownership and assurance that there is no lien on the boat. Without a certificate of title describing the property and owner information, a buyer can be left without a means to conclusively determine ownership, leaving them vulnerable to unwittingly purchasing a stolen boat or a boat with a preexisting lien. While some proponents of boat titling in Tennessee also assert that it could encourage lenders to offer more favorable interest

The Tennessee Wildlife Resources Agency (TWRA) administers the state's boat registration system, including the processing of boat registration applications.

¹² Email from W. Vann Burgess, Program Management and Operations Branch, United States Coast Guard, July 13, 2017.

¹³ Tennessee Code Annotated, Section 69-9-203.

¹⁴ Interview with TWRA staff on May 4, 2017. Brandt Information Services also provides electronic boat titling development and management for other states.

¹⁵ Tennessee Code Annotated, Section 55-3-101.

¹⁶ Yale Law Journal 1961.

A title would provide a safeguard for consumers by providing a potential buyer with straightforward, accessible evidence of ownership and assurance that there is no lien on the boat.

rates to buyers and reduce insurance costs for owners, there is little direct evidence of this in neighboring states that currently issue boat titles.

All stakeholders interviewed support boat titling and say that the benefits to boat owners outweigh the costs, assuming titling fees are not set excessively high. In general, boat titling benefits the consumer in three main ways. A title

- 1) provides clear proof of ownership, which reduces the likelihood that a buyer will unwittingly purchase stolen property;
- 2) provides a straightforward process for recording and viewing liens, which reduces the probability of a buyer unknowingly purchasing a boat with an unsatisfied lien; and
- 3) marginally reduces boat financing fees for recording a lien, which are passed along to the consumer.

Proof of Ownership and Reducing the Likelihood of Purchasing Stolen Property

A boat title would provide a way to determine ownership, which is particularly important when buying and selling a boat. In a non-titling state, verifying ownership can be difficult, making verification less likely to occur and increasing the chances of purchasing a stolen boat. To determine the ownership of a non-titled boat, a boat buyer could request to see all available documentation from the seller, including a manufacturer's statement of origin, past bills of sale, and registration documents, some of which may not be available.

Moreover, because the large majority of states do title boats, stakeholders have noted that potential buyers from other states may be apprehensive about purchasing a boat from a Tennessee owner without a title providing clear evidence of ownership. It is possible that titling boats in Tennessee would encourage interstate transactions with boat buyers from other states that would prefer to purchase a boat with a title.¹⁷

Certificates of title provide important points of information to help identify the property, the owner, and any liens. In Tennessee, except for dealer-to-dealer transfers, each time the ownership of a vehicle changes, a new certificate of title must be issued. For example, motor vehicle titles in Tennessee are required to include the following information on the front of the title:

- Vehicle Identification Number (VIN), make, model, year, and body type of motor vehicle;

¹⁷ Telephone calls with David Dickerson, vice president, state government affairs, National Marine Manufacturers Association, June 15 and 30, 2017.

- title and county number;
- former title number, former title state, sales and use tax amount, and odometer reading
- title issued date and purchase date;
- name and address of any owner(s), as well as the name and address of up to two lien holders;
- brands and/or remarks related to the vehicle or the title itself (e.g., replica, duplicate, actual mileage, etc.).

The back of a Tennessee motor vehicle title is used to record

- the transfer of ownership of the vehicle;
- any liens;
- the odometer disclosure
- the date of sale;
- and sales tax information.¹⁸

Impeding the Sale of Stolen Boats

According to boat theft data provided by the Tennessee Bureau of Investigation, in 2016 there were 133 Tennessee boats reported stolen valued at \$1,000 or more.¹⁹ While boat theft and the sale of stolen boats do not appear to be a significant problem in Tennessee, boat theft can have a devastating effect on those who experience it. According to court records, the Hardin County, Tennessee boat dealer's scam resulted in over half a million dollars in total property loss with 14 reported victims.

The original purpose of certificate of titling laws in the United States was to impede the sale of stolen vehicles. According to Tennessee case law and legislative history, the primary purpose of Tennessee's 1951 law requiring a certificate of title for motor vehicles was to prevent trafficking in stolen motor vehicles.²⁰

A certificate of title requirement provides a potential buyer with evidence of ownership, allowing the buyer to confirm that the seller is the owner or has the authority to sell the property in question, thereby reducing the likelihood that a buyer will unwittingly purchase stolen property. However, it's unclear if there is any relationship between boat titling and reported boat theft. For example, the five states with the highest number of boat thefts all issue boat titles.²¹

¹⁸ Tennessee Department of Revenue 2017.

¹⁹ Email from Dale King, CJIS support center supervisor, Tennessee Bureau of Investigation, June 9, 2017.

²⁰ Hayes v. Hartford Accident & Indemnity Co., 57 Tenn. App. 254 (1967).

²¹ Moss 2016. Note that the rate of boat theft is not available as the boat theft totals for each state are based on registered boats stolen, and states vary regarding which boats are required to be registered.

While boat theft and the sale of stolen boats do not appear to be a significant problem in Tennessee, boat theft can have a devastating effect on those who experience it.

Law enforcement officials have provided anecdotal evidence about the effectiveness of titles to deter the sale of stolen boats and aid the investigation process. United States Coast Guard officials have stated that those states without certificate of title requirements for boats act as “dumping grounds” for stolen boats from other states that have boat titling requirements. According to law enforcement officials, a certificate of title provides a “paper trail,” which aids in the investigation and recovery of stolen boats.²²

Existence of a Lien

A title provides a straightforward process for recording and viewing liens, which reduces the probability of a buyer unknowingly purchasing a boat with a prior lien. To determine whether a lien exists on a non-titled boat, a buyer would check with the appropriate secretary of state’s office to determine whether a Uniform Commercial Code form (UCC-1) financing statement has been recorded against the boat’s owner, a process that may be unfamiliar to many potential boat buyers. In contrast, in a titling state, a buyer would simply look at the title to see whether a lien is recorded. Moreover, in Tennessee, the law provides that lenders hold a motor vehicle title until the loan is satisfied, which could also be applied to boat titles, and this would make it much more difficult for someone to sell a boat with an unsatisfied lien that the buyer was unaware of.²³ See table 1 for a comparison between titling and non-titling states.

Table 1. Comparison of Buying a Boat in a Titling State to a Non-Titling State

	Boat Titling State	Non-Titling State
How would a buyer determine boat ownership and that a boat is not stolen?	A title provides straightforward proof of ownership. The buyer would be able to review the title and confirm that the seller and the boat match the information presented on the title.	Without a title, a buyer would ask the seller to provide other documentation of ownership, none of which is as strong as a title. The buyer would want to review all available documentation, including any prior bills of sale, boat registration cards, and manufacturer’s statement of origin, if available.
How does a buyer determine whether there is a prior lien on a boat they intend to buy?	As liens are listed on the title, a buyer could review the title to confirm that there are no liens. In Tennessee, lenders hold the title for motor vehicles until the loan is satisfied.	A buyer would have to check with the secretary of state’s office to determine whether a preexisting lien exists for the seller. If the results show there is a lien for the individual, then the buyer would do the official search on the secretary of state’s website. There is a \$15 fee plus \$1 per page fee to receive the official UCC lien report on an individual.

Source: Information gathered from Tennessee Code Annotated, Title 55, Chapter 3 and Boat Owners Association of the United States, Boat Buyer’s Toolbox, found at <http://www.boatus.com/assets/pdf/boat-buyers-guide.pdf>.

²² Telephone interview with W. Vann Burgess, Program Management and Operations Branch, United States Coast Guard, July 6, 2017.

²³ Tennessee Code Annotated, Section 55-3-123.

Reducing the Cost to Finance a Boat

Another benefit of a boat title is that it could potentially reduce the cost for a consumer to finance a boat. According to lenders, the cost for a bank to establish a lien is less for titled property, assuming the titling fees are not set too high.²⁴ In general, these financing costs are passed along to the consumer.

In Tennessee, lenders protect their right to have a boat loan repaid by establishing a lien against it. For non-titled property, like boats, a lien is established by filing a financing statement with the Tennessee Secretary of State's Office on a form known as a "Uniform Commercial Code (UCC) form 1" or "UCC-1."²⁵ According to the Secretary of State's office, a UCC-1 is a "financing statement filed to provide notice that a creditor has a security interest in a debtor's personal property. It is notice to the world that one person claims an interest in someone else's property, usually as collateral for a debt."²⁶

However, when the collateral is property subject to a certificate of title statute, such as a motor vehicle, a different rule applies. The Uniform Commercial Code, which has been adopted by Tennessee, provides that a lender's right to repayment in titled collateral is established not by filing a financing statement, but by compliance with the relevant certificate of title statute. In Tennessee, to file a lien against titled property, such as a car, an application for a title with a lien notation is made through the county clerk's office.

For Tennessee motor vehicles, the lien is noted on the back of the title document. The lender's interest is "perfected" by delivery to the county clerk with the required fees and proper proof of the lien and documentation. When the debt is paid off, the lender must discharge the lien and notify the county clerks of the discharge date. The title is then forwarded to the owner.²⁷

In Tennessee, to file a UCC-1 financing statement, there is a filing fee of \$15 per debtor and a recording tax. The recording tax—11.5 cents for each \$100 of indebtedness with the first \$2,000 exempt—is computed by excluding the first \$2,000 of indebtedness reported on the financing statement and multiplying the remaining indebtedness by .00115 (11.5 cents per each 100

According to lenders, the cost for a bank to establish a lien is less for titled property, assuming the titling fees are not set too high.

²⁴ Email from Amy Heaslet, senior vice president and general counsel, Tennessee Bankers Association, September 28, 2017.

²⁵ UCC-1 form is found at <http://sos-tn-gov-files.s3.amazonaws.com/forms/UCC1.pdf>.

²⁶ "UCC Frequently Asked Questions." Accessed January 3, 2017 at <https://sos.tn.gov/products/business-services/ucc-frequently-asked-questions>.

²⁷ Tennessee Department of Revenue 2017.

dollars of indebtedness).²⁸ In other words, the larger the debt, the higher the recording tax will be. In 2016, the average price for a new traditional motorboat was \$43,179,²⁹ which would require payment of a \$47.35 recording tax along with the \$15 filing fee if a UCC lien is established.

To establish a lien on a certificate of title in Tennessee, the cost is the same regardless of the size of the debt. For a motor vehicle title lien, for example, there is a \$5.50 state fee for a new title, and a \$5.50 county fee. There is an \$11 state fee for the notation of the lien on the title. This totals to \$22 to note a lien on a title.³⁰ Table 2 shows that the financing fees for titled motor vehicles are less than for non-titled boats. The higher the debt being financed, the more the consumer would save, assuming the same titling fees would apply to boats as apply to motor vehicles in Tennessee.

Table 2. Financing Cost Comparison for Tennessee

Boat Value Financed	UCC Lien Cost	Motor Vehicle Title Lien Cost	Potential Amount Saved by Titling
\$12,000	\$26.50 [\$15 filing fee + (.00115 x \$10,000) recording tax]	\$22 [\$5.50 state fee, \$5.50 county fee, and \$11 title lien notation fee]	\$4.50 [savings by having a title, plus consumer enjoys the other purported benefits of a title]
\$22,000	\$38	\$22	\$16
\$42,000	\$61	\$22	\$39
\$82,000	\$107	\$22	\$85
\$102,000	\$130	\$22	\$108
\$202,000	\$245	\$22	\$223

Source: TACIR staff analysis of lien recording costs of non-titled boats and titled motor vehicles. See Tennessee Secretary of State’s UCC-1 Financing Statement Instructions and Tennessee Code Annotated, Section 55-6-101.

If a boat titling system were implemented, the filing fee and recording tax required to establish a UCC lien would no longer be collected for titled boats as the liens would be noted on the title instead. The money collected from UCC filing fees is earmarked to maintain the Secretary of State’s UCC lien recording system, while the money collected from the recording tax is transmitted to the Department of Revenue. According to the Secretary of State’s office, the state’s UCC filing system does not classify the collateral description in a way that their office could determine the number of boats with UCC liens, and therefore, they do not have a mechanism to estimate any loss in revenue from a reduction in the filing fees from UCC liens

²⁸ Tennessee Secretary of State’s UCC-1 Financing Statement Instructions are found at <http://sos-tn-gov-files.s3.amazonaws.com/forms/UCC1.pdf> and <https://sos.tn.gov/products/business-services/ucc-frequently-asked-questions>.

²⁹ Email from Libby Yranski, manager of state government relations, National Marine Manufacturers Association, August 18, 2017.

³⁰ Tennessee Code Annotated, Sections 55-3-101 through 55-3-130.

on boats.³¹ The recording tax revenue transmitted to the Department of Revenue was \$8,132,397 in fiscal year 2017, with 13% going to the Housing Program Fund and 87% percent going to the general fund.³² However, this amount includes the recording tax revenue from many other types of personal property other than boats with UCC liens.

In other words, if a boat titling system were implemented, there could be a reduction in revenue as less filing fee and recording tax revenue would be collected from the reduced number of UCC liens for boats. As the number of UCC boat liens in Tennessee is not known, it's not clear what that reduction in revenue would be.

Boat titling requirements, fees, and administration vary by state.

If the State of Tennessee decides to issue boat titles, it could consider limiting the titling requirements to larger, more valuable boats based on a specified length or engine horsepower, and it could further limit the law to those boats manufactured after a specified future date. For example, the Uniform Law Commission's model legislation on boat titling—known as the Uniform Certificate of Title for Vessels Act (UCOTVA)—requires a title for boats that are at least 16 feet in length or propelled by an engine of at least ten horsepower. The model law's criteria are based on the common criteria used in other boat titling states.

Several states limit titling requirements to boats over a specified length or engine power.

Thirty-six states require boat titling, and one state—Mississippi—allows for optional boat titling, as shown in figure 1. Among the 37 states that have a boat titling system, there is considerable variation in the scope of the titling laws, including the types of boats required to be titled and which state entity is responsible for the administration of the system.

Boat titling laws in other states provide examples of potential criteria that could be used in Tennessee to select which boats require a title. Several states that title boats exempt smaller, less valuable boats from having to be titled by requiring titles only for boats over a specified length, engine size, or some combination of the two (see appendix C). Similarly, Tennessee stakeholders have expressed the importance of not requiring titles for all boats, particularly smaller boats, such as jon boats.³³ In Michigan, boats

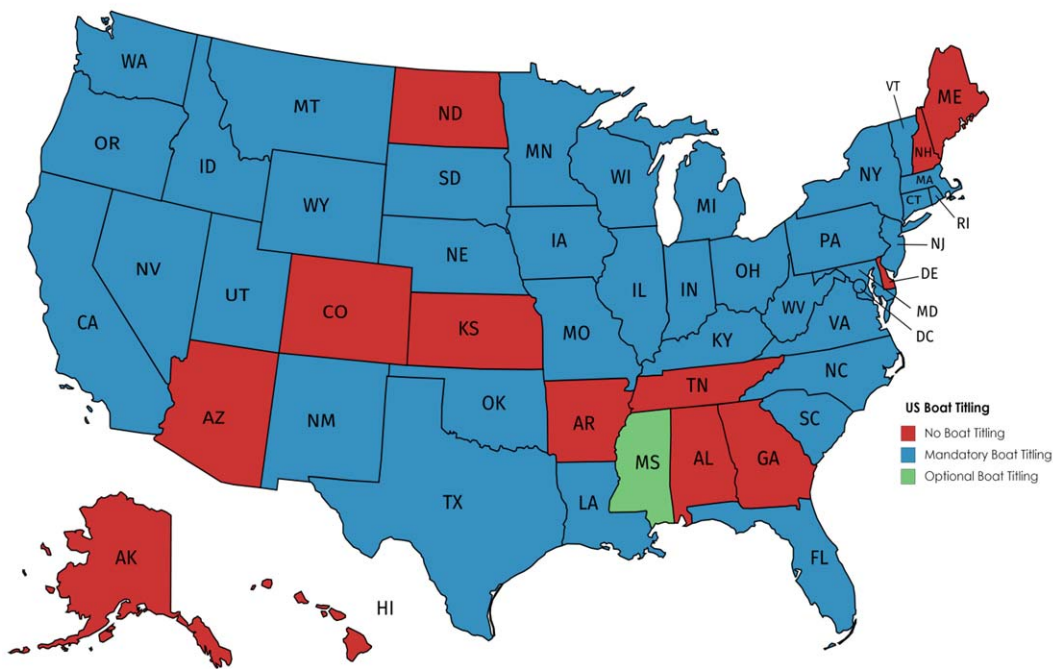
Among the 37 states that have a boat titling system, there is considerable variation in the scope of the titling laws, including the types of boats required to be titled and which state entity is responsible for the administration of the system.

³¹ Email and phone call with Nathan Burton, Business Services Division, Office of the Tennessee Secretary State, December 21, 2017.

³² Email from Barbara Sampson, deputy commissioner, State of Tennessee Department of Revenue, December 22, 2017.

³³ Interview with Senator Mark Norris, April 6, 2017.

Figure 1. Boat Titling by State, 2017



Source: TACIR staff analysis of other states’ boat titling laws.

with permanently attached engines—which tend to be more powerful—must be titled regardless of length. But all other boats, including sailboats and motorboats without permanently attached engines, require titles only if they are at least 20 feet long.³⁴ In Virginia a title is required for all motorized vessels of any length and sailboats over 18 feet in length.³⁵ In North Carolina, titling is required for all vessels purchased or transferred after January 1, 2007, for all personal watercraft (i.e., jet skis), and motorized vessels or sailboats 14 feet or longer.³⁶ North Carolina allows any other vessel to be titled at the owner’s option.³⁷ In Minnesota, titling is required for all vessels over 16 feet in length but all kayaks, canoes, row-type fishing boats, waterfowl boats, and lifeboats are excluded.³⁸ In 18 states, any boat that is required to be registered must also be titled. Should Tennessee take this approach, all boats propelled by a sail or motor would require a title, regardless of the size of the boat.³⁹ See appendix C for a chart detailing other states’ boat titling criteria.

³⁴ Michigan Compiled Laws Services, Section 324.80302.

³⁵ Virginia Code Annotated, Sections 29.1-733.2 and 29.1-733.6.

³⁶ North Carolina General Statute, Section 75A-34.

³⁷ Ibid.

³⁸ Minnesota Annotated Statutes, Section 86B.825.

³⁹ Tennessee requires all sail and motor-powered boats to be registered.

Boat titling fees vary by state.

As shown in table 3, boat titling fees also vary among the states, ranging from a \$2 fee in Maryland to a \$60 fee in New Jersey. See appendix C for boat titling fees for every titling state.

Table 3. Other States' Boat Titling Fees

Boat Titling Fee Amount	Number of States
\$2 to \$10	15
\$11 to \$20	11
Over \$20	9
Fee Schedule	2

Source: TACIR staff analysis of other states' boat titling laws.

Phased-In Boat Titling Requirements

Some states have phased in boat titling requirements by limiting the requirements to boats manufactured after a specified future date. This helps to reduce the substantial administrative burden that would be created if all existing boats meeting the designated criteria were required to be titled. Moreover, to allow the public and the affected government entities time to prepare for implementation of a new boat titling requirement, some states have passed a law that becomes effective one or two years after passage of the law. Connecticut, for example, passed a boat titling law in 2014 that became effective in 2016 and only applied to boats manufactured in 2017 and after.⁴⁰ Connecticut officials interviewed strongly recommend a delayed effective date and the phasing in of boat titling requirements.⁴¹ Seven additional states similarly exempt boats manufactured before a certain date from titling requirements.

Two other states, North Carolina and West Virginia, instead exempt boats sold or transferred before a certain date from titling requirements. In interviews and when discussing prior boat titling legislation, stakeholders in Tennessee have expressed support for limiting titling to newly manufactured boats, but some, including representatives for county clerks, have raised concerns about titling boats based on a specified date of sale or transfer because it could require titling older boats sold or transferred without documentation of prior ownership.⁴²

Some states have phased in boat titling requirements by limiting the requirements to boats manufactured after a specified future date.

⁴⁰ Connecticut General Statutes, Sections 15-201 through 15-232 and Connecticut Public Act No. 14-63 of 2014.

⁴¹ Telephone interview with Thomas Welsh, attorney, Connecticut Law Revision Commission, July 13, 2017, and Eleanor Mariani, Connecticut boating law administrator, June 26, 2017.

⁴² Interview with Mary Gaither, Tipton County Clerk, Kellie Jackson, Montgomery County Clerk, TWRA, and the Department of Revenue, November 15, 2017.

The Uniform Law Commission developed model legislation on boat titling.

Model Legislation – Uniform Certificate of Title for Vessels Act

The Uniform Law Commission (ULC) has developed model legislation—called the Uniform Certificate of Title for Vessels Act (UCOTVA)—for boat titling in an effort to improve boat titling laws and promote consistency among the states⁴³ UCOTVA was drafted with input from boat manufacturers, dealers, state boating law administrators, and the United States Coast Guard. Two states, Virginia and Connecticut, have enacted modified versions of UCOTVA, and several other states, including Alabama and Georgia, have introduced, but not passed, boat titling bills based on UCOTVA.⁴⁴ If Tennessee decides to require boat titling, the UCOTVA could be used as a resource.

The UCOTVA was created to help provide consistent boat titling laws across the country. According to the ULC, motor vehicle titling laws vary only slightly regarding which vehicles are covered, and almost all are based on where the vehicle is principally garaged. On the other hand, the 37 boat titling state laws vary widely in scope in two distinct ways. First, they do not all cover the same types of vessels, each making its distinctions based on size and propulsion. Second, the statutes vary in whether they are based on where the vessel is principally used, where it is principally docked, or where the owner resides. Consequently, significant gaps and some duplication in coverage exist. The gaps could allow for extensive fraud: title to a stolen vessel can be washed by moving the vessel to a new jurisdiction that either has no titling law or has a statute that does not cover the type of vessel stolen.⁴⁵

The UCOTVA was written by legal experts to conform a state’s titling law with Article 9 of the Uniform Commercial Code, which Tennessee has adopted. As a result, difficult legal interpretive problems can be avoided.⁴⁶

According to the ULC, the UCOTVA regulates the titling of boats in a similar manner to the way that all states now regulate titles for automobiles, and by ensuring that a boat’s rightful owner is easily identifiable, the uniform law facilitates financing of boats and deters theft. The model law also establishes title branding⁴⁷, which is promoted as a way to protect consumers by requiring disclosure on the boat’s title of any damage that affects the vessel’s integrity. See appendix G for a copy of the UCOTVA.

⁴³ See UCOTVA summary at www.uniformlaws.org/ActSummary.aspx?title=Certificate%20of%20Title%20for%20Vessels%20Act.

⁴⁴ See <http://www.uniformlaws.org/Act.aspx?title=Certificate%20of%20Title%20for%20Vessels%20Act>.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Branding is a code on the title that indicates if the vessel has been damaged.

According to the ULC, the UCOTVA will modernize and standardize the law of titling of boats, resulting in the following advantages for enacting states:

- ***UCOTVA can promote new commercial activity in your state.*** UCOTVA facilitates vessel financing because security interests perfected pursuant to the act should receive the status of a preferred ship mortgage under federal law. No current state certificate of title statute for vessels has the same effect.
- ***UCOTVA prevents unnecessary litigation.*** UCOTVA integrates seamlessly with the Uniform Commercial Code, particularly Articles 2 and 9. It provides clear rules on all matters relating to a security interest in a vessel, meaning fewer disputes will go to court.
- ***UCOTVA protects consumers from buying unsafe boats.*** UCOTVA aids consumers and facilitates boating safety by requiring the title of a vessel to be branded if the integrity of the vessel's hull has been compromised.
- ***UCOTVA prevents criminal activity.*** UCOTVA deters and impedes the theft of boats by providing both government officials and interested buyers with a simple means of identifying vessels. Uniform adoption of UCOTVA will help prevent "title-washing" by relocating stolen watercraft to another state.
- ***UCOTVA is administratively simple.*** UCOTVA imposes few new burdens or costs on state titling offices.
- ***UCOTVA is popular with stakeholders.*** UCOTVA was drafted with extensive input from state boat law administrators, boat manufacturers, financiers, insurers, and the United States Coast Guard.⁴⁸

Boat titling in other states is commonly administered by the same entity that administers boat registration.

Prior boat titling legislation proposed making the agency responsible for boat titling either the Tennessee Wildlife Resources Agency (TWRA) or the department that administers vehicle titling, which is currently the Department of Revenue.⁴⁹ The TWRA is the state's boating agency and administers the state's boat registration system.⁵⁰ According to TWRA and Department of Revenue staff, for administrative efficiency, the same state

The model law was written by legal experts to conform a state's titling law with Article 9 of the Uniform Commercial Code, which Tennessee has adopted. As a result, difficult legal interpretive problems can be avoided.

⁴⁸ See "Why Your State Should Adopt UCOTVA" found at <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20uctva>.

⁴⁹ The Department of Safety was also listed in prior legislation when it was charged with administering the state's motor vehicle titling system.

⁵⁰ Tennessee Code Annotated, Section 69-9-203(a), states that "it is the sole duty and responsibility of the Tennessee wildlife resources agency to enforce and administer" boating regulation in the state.

North Carolina administers boat titling centrally through the state's Wildlife Resources Commission without the assistance of local government.

entity charged with administering boat registration should be charged with administering a potential Tennessee boat titling system.⁵¹ According to the TWRA staff, the agency's operating revenue would be adversely affected if it lost the boat registration program and requiring consumers to interact with two separate agencies to register and title boats would be unnecessarily difficult. Moreover, Tennessee boaters are accustomed to dealing with the TWRA for all boating related matters, such as enforcing boater safety laws and boat registration. Among the 37 states that title boats, only four states use separate government agencies for boat titling and boat registration.⁵² Seventeen of the boat titling states use their TWRA-equivalent agency to administer boat titling.

Information provided by the TWRA and the Department of Revenue, estimates that the TWRA could implement and administer a new boat titling system at a lower cost to the state. See appendix H for fiscal estimates from TWRA and the Department of Revenue on model legislation on boat titling.

In North Carolina, boat registration and titling are administered entirely by the state's Wildlife Resources Commission (NCWRC). One form, known as a VL-1 form, is used to document vessel information for registration and recording title. The form is available online and can be submitted with documentation by mail to the NCWRC. The state also allows boaters to register and title their boats at one of more than 400 Wildlife Service Agents, which include locations such as Wal-Mart, sporting goods stores, and gun shops. According to the state's website:

As independent agents of the NC Wildlife Resources Commission, Wildlife Service Agents offer a variety of services to the public, including the sale of hunting/fishing licenses, Wildlife in North Carolina magazine subscriptions, and vessel registrations. These agents carry out the Commission's objectives by providing wildlife resource services at efficient and convenient outlets throughout the state.⁵³

When purchasing a non-titled vessel from another state, the buyer submits the VL-1 form, a notarized bill of sale, and a copy of the previous owner's out-of-state registration for the vessel. Once a vessel has been titled in North Carolina by its owner, registrations can be renewed online, by mail, or at any Wildlife Service Agent. The Wildlife Commission keeps computerized records on all titled vessels and issues Title Certificates to document the

⁵¹ Interview with TWRA and Department of Revenue staff, November 15, 2017.

⁵² Idaho, Nebraska, Ohio, and Wyoming.

⁵³ North Carolina Wildlife Resources Commission. "Wildlife Service Agents Search." <https://www.ncalvin.org/WildlifeServiceAgentMVC/>.

owner of a vessel and any liens that lenders choose to record on the Title Certificate. Although it is possible to record a vessel lien with a Uniform Commercial Code filing, most lenders choose to record it on the vessel's Title Certificate.⁵⁴ For an owner to sell a titled vessel, the "Assignment of Title" section of the Title Certificate is filled out. The purchaser is named, the owner signs the form and has the signature notarized. The Title Certificate is then given to the purchaser. The purchaser, the boat dealer, or the Wildlife Service Agent must turn in the previous owner's Title Certificate to the Wildlife Commission to apply for transfer of ownership.⁵⁵

Some states use an electronic titling system.

The state could establish an electronic lien and titling system for boats instead of the current titling system used in Tennessee for motor vehicles. Electronic titling allows lenders to record and release liens electronically, saving time and money. The owner will still receive a paper title document once the lien is satisfied. Some states, such as Florida and Virginia, use a third party contractor to administer their electronic lien and title system. The TWRA already contracts with a third party for boat registration renewals. This same third party also provides electronic boat titling services for other states, including Virginia and Florida.⁵⁶ According to the State of Florida's Department of Highway Safety and Motor Vehicles, electronic titling

- reduces title fraud;
- reduces titling costs;
- provides faster notification of lien satisfactions;
- reduces the storage of title documents;
- provides access to expedited title printing;
- reduces title paper usage; and
- allows better customer service.

Prior Tennessee Boat Titling Legislation

Boat titling is not a new issue in Tennessee. Since 1995, the Tennessee legislature has considered but has not passed, six bills regarding boat titling. Prior legislation varied in the scope of boats required to be titled, the state agency charged with the administration, the titling fee, and whether or not titling would be mandatory or optional. See table 4 for summaries of prior Tennessee boat titling legislation. Many of the previous bills included county clerks in the titling process because of their experience in

Electronic titling allows lenders to record and release liens electronically, saving time and money.

⁵⁴ "What is vessel titling?" <http://www.ncwildlife.org/Boating/Registration-Titling#543138-what-is-vessel-titling>.

⁵⁵ Ibid.

⁵⁶ See www.brandtinfo.com and email from Chris Richardson, special assistant to the director, policy and legislation, TWRA, October 16, 2017.

Table 4. Tennessee Boat Titling Legislation Since 1995

Year Introduced	Prior Bills	Bill Summaries
2007	Senate Bill 784 by Burchett and House Bill 1921 by Rinks	The bill would have required titling for all motorized boats and sailboats with TWRA as the administrative entity with title fee of \$13.50. County clerk would be paid \$6.50 for each title application received and forwarded.
2001	Senate Bill 1784 by Burchett and House Bill 243 by Patton	The bill would have required titling for all motorized boats and sailboats over 16 feet in length and not primarily used for fishing with the Department of Safety as the administrative entity and a title fee of \$8. County clerks would be paid \$4.50 of the fee for receiving and forwarding the title applications.
1999	Senate Bill 885 by Atchley and House Bill 819 by Rinks	The bill would have required personal watercraft (e.g., “jet skis”) and watercraft with inboard motors to be titled; permits other watercraft to be titled with the Department of Safety as the administrative entity with a title fee of \$8. County clerks would be paid \$4.50 of the fee for receiving and forwarding the title applications.
1999	Senate Bill 636 by Springer, P. and House Bill 959 by Tidwell	The bill would have created a voluntary system of boat titling with the Department of Safety as the administrative entity with a title fee of \$8. County clerks would be paid \$4.50 of the fee for receiving and forwarding the title applications.
1997	Senate Bill 385 by Atchley and House Bill 1120 by Rinks	The bill would have required titling for all motorized boats and all sailboats with the Department of Safety as the administrative entity with a title fee of \$8. County clerks would be paid \$4.50 of the fee for receiving and forwarding the title applications.
1995	Senate Bill 470 by Atchley and House Bill 217 by Rinks	The bill would have required titling for all motorized boats and all sailboats with the Department of Safety as the administrative entity with a title fee of \$8. County clerks would be paid \$4.50 of the fee for receiving and forwarding the title applications.

processing the necessary documentation and fees for motor vehicle titling. Clerks, because of their proximity to citizens across the state, also serve as a convenient interface for the public. Representatives for county clerks have expressed interest in the clerks performing such a role, though they would prefer administration of the system be housed with the Department of Revenue because of its administrative experience with motor vehicle titling and its effective working relationship with the clerks. They have also indicated that their participation in the titling process may require them to hire additional staff, but any associated costs are unclear.

Boat titling is not a cure-all.

Although boat titling would provide some protections and benefits for boat owners and buyers and would increase the chances of uncovering fraud, a titling system alone would not prevent all fraud or ensure that victims are compensated for their losses. For example, even if boats were titled, it is possible that the Hardin County boat dealer scam could have occurred as there is no guarantee that all prospective buyers would check for a title prior to payment. When a transaction is being financed with the boat used as collateral, a lender would likely uncover a scam when attempting to note its lien on the title. But an unscrupulous dealer could try to deceive a buyer into paying cash for a boat with false promises to send a title later. In a scam similar to the Hardin County situation in which the same boat is sold multiple times to multiple individuals, only one buyer can retain possession of the boat after the fraud is uncovered, leaving the others to attempt to recover only monetary damages.⁵⁷

One of the issues that led the bill sponsors to request this study was that a victim of the Pickwick Lake boat scam was not allowed to recover his boat from the subsequent buyer, who had purchased the boat in the ordinary course of business from the boat dealer. Tennessee Code Annotated, Section 47-2-403(2), states that “Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.” The law makes a distinction between merchants and non-merchants to protect good faith buyers who purchase from merchants.

Tennessee Code Annotated, Section 47-2-403(2), is commonly known as the “entrustment doctrine” and addresses the specific situation where a person entrusts something to a merchant who deals in goods of that kind, and the merchant later sells the entrusted item to a good faith buyer in the ordinary course of business, even if that merchant did not have permission from the owner to sell it. This is exactly the situation that happened at Pickwick Lake. A victim purchased a boat from the boat dealer and agreed to allow the dealer to maintain possession of the boat for maintenance purposes, i.e., entrusting possession of the boat to the dealer. The dealer then fraudulently sold the same boat to another unsuspecting good faith buyer, who is now the rightful owner under the law.⁵⁸ While a boat titling requirement in Tennessee may have made this fraudulent scheme more difficult to accomplish, it’s not clear that it would have necessarily prevented it from occurring.

⁵⁷ Email and telephone interviews with Ernest B. Williams IV, commercial finance attorney, and Mike Schwegler, commercial finance attorney, October 10, 2017, December 12, 2017, and December 20, 2017.

⁵⁸ Note that if a lender had a lien on the boat, and the lender was not the party responsible for entrusting the boat, then the lender’s lien would still be enforceable. See Tennessee Code Annotated, Section 47-2-403.

A titling system alone would not prevent all fraud or ensure that victims are compensated for their losses.

However, if the boat dealer had been required to have a surety bond as a condition of being a dealer in Tennessee, the victims of the dealer's fraud would be able to recover from the dealer's bond and mitigate some of their losses.

Consumer Protection Beyond Titling

Tennessee does not license or place any preconditions on becoming a boat dealer. In contrast, Tennessee motor vehicle and RV dealers—before being approved for the required license to be a dealer—must submit proof of several items, including a surety bond of at least \$50,000 and prior conviction records.⁵⁹ In implementing the regulation and licensing of motor vehicle dealers, the Tennessee General Assembly stated the following in its legislative findings and declaration:

“The general assembly finds and declares that the distribution and/or sale of motor vehicles in the state vitally affects the general economy of the state and the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and their representatives doing business in Tennessee in order to prevent frauds, impositions and other abuses upon its citizens.”⁶⁰

A surety bond requirement would help to mitigate the damage caused to a consumer who was swindled by an unscrupulous dealer, such as the aforementioned Hardin County, Tennessee boat dealer. To secure a surety bond, there is an application process. If a potential dealer was deemed to be too great a risk, they might not be able to secure a bond, making them ineligible to receive a boat dealer license. The executive director of the Tennessee Motor Vehicle Commission suggested that if a surety bond requirement for boat dealers was implemented, the bond amount requirement could be scaled to the size of the dealer, as a larger dealer could cause more financial harm to customers, which a small bond amount may not cover.⁶¹

Requiring a dealer to provide felony conviction records prior to receiving a license would help to identify individuals who may be more likely to commit fraud or other abuse and possibly need of exclusion. For example, there is nothing preventing the aforementioned Hardin County boat

Tennessee does not license or place any preconditions on becoming a boat dealer.

⁵⁹ See appendix B.

⁶⁰ Tennessee Code Annotated, Section 55-17-101.

⁶¹ Telephone interview with Paula Shaw, executive director, Tennessee Motor Vehicle Commission, August 23, 2017.

dealer—who was convicted of felony theft and served jail time—from becoming a boat dealer again in Tennessee.

In addition to submission of proof of a surety bond and conviction record, motor vehicle and RV dealers have to provide proof of several other items prior to being licensed by the state. See table 5 for a summary of the key requirements to be a motor vehicle or RV dealer in Tennessee, and see appendix B for a complete list of the requirements with an additional explanation for each requirement.

Table 5. Tennessee’s Regulation of Motor Vehicle, Recreational Vehicle, and Boat Dealers

	Motor Vehicle and Recreational Vehicle Dealers	Boat Dealers
License Required	License required. An extensive multi-page dealer application is required to be completed and approved.	No license required
Who is required to be licensed?	Motor vehicle dealers, RV dealers, salesmen, manufacturers, distributors, dismantlers, and recyclers	No license
License Fees	Required. Various biennial license fees ranging from \$35 to \$1,600.* For example, motor vehicle dealer selling new or used motor vehicles must pay a biennial license fee of \$400.	No license
Surety Bond	\$50,000 surety bond required	Not required
Liability Insurance	\$300,000 minimum liability insurance required	Not required
Financial Statement	\$10,000 minimum net worth required	Not required
State Entity Charged with Regulation	Department of Commerce and Insurance, Motor Vehicle Commission	Not regulated

*See Rules of Tennessee Motor Vehicle Commission, Section 0960-1-.14.

Source: Rules of the Tennessee Motor Vehicle Commission, Chapter 0960-01, Sections .01 through .29; and the Department of Commerce and Insurance, Motor Vehicle Commission, “Minimum Requirements for Tennessee Motor Vehicle Dealer License;” and TACIR staff review of state statutes and rules.

While not as common as motor vehicle dealer regulations, there are examples of other states regulating boat dealers, including two of Tennessee’s neighboring states, Virginia and Missouri. In general, states have chosen to not apply all of the motor vehicle dealer regulations to boat dealers. The state could choose to implement only the surety bond and criminal background check requirements that apply to vehicle dealers.

For example, Virginia requires dealers to be licensed by the Virginia Department of Game and Inland Fisheries (VDGIF), which requires a \$5,000 surety bond as well as an inspection by a Conservation Enforcement Officer

A surety bond requirement would help to mitigate the damage caused to a consumer who was swindled by an unscrupulous dealer.

In Tennessee, motor vehicle and RV dealers have to provide proof of several items prior to being licensed by the state, including evidence of a surety bond and any conviction record.

to verify the dealer’s established place of business.⁶² Missouri licenses boat dealers—anyone who sells six or more boats in a year—through its Motor Vehicle Bureau. It requires a \$25,000 surety bond, business inspection, and a complete criminal history report.⁶³

Other states that regulate boat dealers include Connecticut, Indiana, Michigan, Montana, and Washington, and these states typically require dealers to prove they have a permanent place of business, obtain surety bonds, and submit criminal background checks. Some states require that a dealer sell a minimum number of vessels to be considered a dealer.

Connecticut issues marine dealer’s registration numbers (MDRNs) through its Department of Energy and Environmental Protection Boating Division. The state requires dealers to have a suitable place of business, open to the public with a listed phone number and conducts site visits for new MDRN applicants. To renew an MDRN, dealers must have sold more than five boats in the year or, if fewer, at least \$50,000 in value. Connecticut has no surety bond requirement.⁶⁴ In Indiana, the Secretary of State Dealers Division issues watercraft dealer licenses. Anyone who sells six or more boats in a year must be a licensed dealer and obtain a \$25,000 surety bond and specified amounts of liability insurance coverage, as well as submit a criminal history background check.⁶⁵

The Michigan Secretary of State issues vehicle dealer licenses, which include boats. A \$10,000 bond is required, along with fingerprints and a criminal background check and work history, for anyone who sells six or more boats in a year.⁶⁶ The Montana Department of Justice Motor Vehicle Division issues dealer licenses for all types of vehicles, including boats. A \$5,000 bond is required, as are liability insurance and a permanent building with signage. The department may refuse, after examination and investigation, to issue a license to an applicant based on prior financial, criminal, or other activities, but does not specify the manner of a background check.⁶⁷

The Washington State Department of Licensing issues boat dealer licenses, which are processed by the Department of Revenue’s Business Licensing Service. A \$5,000 surety bond is required unless the dealer sells 15 or fewer

⁶² Virginia Department of Game and Inland Fisheries. <https://www.dgif.virginia.gov/wdl/>.

⁶³ Missouri Dealer Operating Manual. Missouri Department of Revenue, Motor Vehicle Bureau, Dealer Licensing Section. http://dor.mo.gov/motorv/liendeal/documents/DealerOperatingManual_001.pdf.

⁶⁴ General Statutes of Connecticut, Title 15, Chapter 268, Part III. See also Regulations of Connecticut State Agencies, Title 15 Navigation and Aeronautics and http://www.ct.gov/deep/lib/deep/boating/boating_docs/annual_report.pdf.

⁶⁵ Office of the Indiana Secretary of State, Auto Dealer Services Division at <https://www.in.gov/sos/dealer/3933.htm> and 2014 Indiana Code Title 9, Article 32, Chapter 8.

⁶⁶ Michigan Compiled Laws, Act 300 of 1949, Section 257.248; and Act 451 of 1994, Section 324.80102.

⁶⁷ Montana Department of Justice, Motor Vehicle Division, Title and Registration Bureau. “General Information and Requirements for Application for a Motor Vehicle Dealer License.”

vessels valued less than \$2,000 each. A separate Personal Criminal History Statement is required for each owner, officer, or member of the business.⁶⁸

Two states have a varying surety bond requirement for boat dealers, depending on the number and value of boats sold. Maine includes boats in its definition of “motor vehicles.”⁶⁹ A surety bond is required, the amount of which is based on prior year number of sales. Initial licensees shall file a bond based on projected sales. Applications for a dealer’s license also require “qualifications and business history” and criminal background information. Maine’s surety bond requirements are as follows:

- For 0 to 50 sales: \$25,000;
- For 51 to 100 sales: \$50,000;
- For 101 to 150 sales: \$75,000; and
- For 151 sales and over: \$100,000.

In Maryland, bond amounts vary depending on a dealer’s gross sales for the last year; however, dealers who are about to begin their first year of business and don’t have any gross sales for the last year must post a surety bond in the amount of \$20,000.⁷⁰ Maryland’s bond requirements are as follows:

- Gross sales < \$500,000: \$5,000;
- > \$500,000 but < \$1 Million: \$10,000;
- > \$1 Million but < \$3 Million: \$20,000;
- > \$3 Million but < \$5 Million: \$50,000;
- > \$5 Million but < \$10 Million: \$100,000;
- > \$10 Million but < \$15M: \$150,000; and
- \$15 Million and greater: \$200,000.

The Tennessee Motor Vehicle Commission, which regulates motor vehicle and RV dealers, is a self-supporting entity that collects fees to pay for its operating costs. According to state law, regulatory boards and commissions that are not self-sustaining from program revenue (e.g., licensing fees) for two consecutive years shall be reviewed by a joint evaluation committee during the next legislative session.⁷¹ It could be challenging for a regulatory board to cover administrative costs such as a call center, complaint investigations, appeals, and enforcement actions. If the Motor Vehicle Commission is charged with the regulation of boat dealers, it could face difficulties in collecting enough licensing fees from

Maine and Maryland have a scaled surety bond requirement for boat dealers, depending on the number and value of boats sold.

⁶⁸ Washington State Department of Licensing. <http://www.dol.wa.gov/business/vehiclevesseldealer/dlrvessel.html>.

⁶⁹ Maine Revised Statutes Annotated, Title 29-A, Chapter 9, Subchapter 2 (Amended 2017, ch. 229, Section 17).

⁷⁰ Annotated Code of Maryland, Natural Resources, Title 8, Subtitle 7, State Boat Act.

⁷¹ Tennessee Code Annotated, Section 4-29-121.

the relatively small amount of boat dealers in the state to sufficiently cover the new program's cost, particularly in the first year of implementation.⁷²

⁷² Email and phone call with Paula Shaw, executive director, Tennessee Motor Vehicle Commission, December 18, 2017.

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Persons Interviewed

Matt Anderson, President
Global Marine Insurance Agency

Sondra Bell, Deputy Director of Vessel Titling and
Registration
Mississippi Department of Wildlife, Fisheries and
Parks

Steve Bernaski, Regional Sales Executive
RV and Marine Financing, Huntington Bank

Chuck Bidek, Chief Executive Officer
Insurors of Tennessee

Tracy Boyers, Attorney
Tennessee Wildlife Resources Agency

William Vann Burgess, Program Management and
Operations Branch of US Coast Guard

Dana Capocaccia, Chief Executive Officer
StatLink Systems, Memphis, Tennessee

Ed Carter, Executive Director
Tennessee Wildlife Resources Agency

Jim Coburn, President
National Marine Lenders Association

Jeff Cole, County Clerk
Anderson County, Tennessee

Donna Craig, County Clerk
Henry County, Tennessee

Brian Daniels, Administrative Officer
North Carolina Wildlife Resources Commission

David Dickerson, Vice President, State Government
Affairs
National Marine Manufacturers Association

Jeni DiPrizio, Senior Investigative Reporter
Local 24 News, Memphis, Tennessee

Kaitlin Dohse, Legislative Counsel
Uniform Law Commission

John Duncan, Assistant Commissioner of Revenue
Operations
Tennessee Department of Revenue

Mary Gaither, County Clerk
Tipton County, Tennessee

Tom Guess, State Boating Law Administrator
Virginia Department of Game and Inland Fisheries

Amy Heaslet, Senior Vice President and General
Counsel
Tennessee Bankers Association

William Higgins, Public Policy Manager
Marine Retailers Association of the Americas

Lisa Hocutt, Assistant Chief
North Carolina Wildlife Resources

Kellie Jackson, County Clerk
Montgomery County, Tennessee

Kirk Johnson, Director of Research
Tennessee Department of Revenue

Bob Keast, Owner
Birdsong Marina, Camden, Tennessee

Jennifer Loudermilk, Loan Processor
First Bank and Trust, Bristol, Tennessee

Eleanor Mariani, Connecticut Boating Law
Administrator
Department of Energy and Environmental
Protection

Esson Miller, Chair of the Uniform Law Commission
Committee
Uniform Certificate of Title for Vessels Act

Glenn Moates, Lieutenant Colonel, Boating and Law
Enforcement Division
Tennessee Wildlife Resources Agency

Mark Norris, State Senator
District 32, Tennessee
Chairman, TACIR

Don Parkhurst, Senior Vice President
Marine and RV Finance, SunTrust Bank

Jimmy Poss, County Clerk
DeKalb County, Tennessee

Allison Raymer, Vehicle Services Director
Tennessee Department of Revenue

Chris Richardson, Special Assistant to the Director,
Policy and Legislation
Tennessee Wildlife Resources Agency

Randy Rinks, Former State Representative and
Sponsor of Prior Boat Titling Bills

Barbara Sampson, Deputy Commissioner
Tennessee Department of Revenue

Ben Sanders, Executive Director of Government
Affairs
Farm Bureau Insurance-Tennessee

Michael B. Schwegler, Finance Attorney
Member of Ernest Williams IV, PLLC.

Paula J. Shaw, Executive Director
Tennessee Motor Vehicle Commission

Captain Matthew Walz, Director of Water Patrol
Division
Missouri State Highway Patrol

Randy Wattenbarger, Boat Dealership Owner
Cleveland Boat Center, Cleveland, Tennessee

Thomas J. Welsh, Attorney
Connecticut Law Revision Commission
Updike, Kelly and Spellacy Law Firm

Derrick K. Whitten, Vice President
Hardin County Bank, Savannah, Tennessee

Paula Wilhite, Deputy County Clerk
Hardin County, Tennessee

Ernest B. Williams IV, Commercial Finance Attorney

Bobby Wilson, Assistant Director, Field Operations
Tennessee Wildlife Resources Agency

Appendix A: Public Chapter 179, Acts of 2017



State of Tennessee

PUBLIC CHAPTER NO. 179

SENATE BILL NO. 1261

By Norris, Southerland

Substituted for: House Bill No. 1068

By Moody

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 10, to direct the Tennessee advisory commission on intergovernmental relations to conduct a study on the titling of boats.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 10, is amended by adding the following as a new section:

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the creation and implementation of a system for the titling of boats in this state. This study must be conducted from TACIR's existing resources.


(b) All appropriate state departments and agencies shall provide assistance to TACIR in connection with the study required by subsection (a).

(c) TACIR shall report its findings and recommendations, including any proposed legislation or interim reports upon conclusion of its study.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1261

PASSED: April 10, 2017


RANDY McNALLY
SPEAKER OF THE SENATE


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of April 2017


BILL HASLAM, GOVERNOR

Appendix B: Motor Vehicle/RV Dealer License Requirements



STATE OF TENNESSEE
 DEPARTMENT OF COMMERCE AND INSURANCE
 MOTOR VEHICLE COMMISSION
 500 JAMES ROBERTSON PARKWAY
 DAVY CROCKETT TOWER, 5th FLOOR
 NASHVILLE, TENNESSEE 37243
 TELEPHONE (615) 741-2711 FACSIMILE (615) 741-0651

Minimum Requirements for Tennessee Motor Vehicle Dealer License

The following requirements must be met (or exceeded) to complete the application.

1. **Established Place of Business** – Applicants must have a permanent facility principally and primarily used for sales and servicing of motor vehicles. Temporary facilities are prohibited, and established facilities shall not include a private residence of any kind. Modular Units must be underpinned.
 - a. **Facility** – The building/office must total 288 square feet and provide functioning restroom accommodations.
 - b. **Display Lot** – The facility shall have immediate and contiguous access to and exclusive dedicated use of a motor vehicle display lot capable of accommodating fifteen (15) motor vehicles of the dealership’s product line and three (3) for customer parking. The display lot cannot, in any part, be public lands, unimproved land or driveways, or be co-mingled with the inventory or parking of any other business. The lot shall consist of compacted gravel, chert, stone or similar materials, and shall not include grass.
 - c. **Exception** – The dealer principal (only) may operate one (1) additional business at the dealer’s established place of business; provided, at least sixty-six percent (66%) of the dealer’s established place of business is used for the sale, service or both, of motor vehicles and that the income derived from the additional business is less than thirty-three percent (33%) of the gross income of the dealership. All records and inventory must be maintained separate and apart from the motor vehicle sales operation. Both shall be clearly labeled as such and all business records must be maintained separately, including sales and use tax records for inspection purposes.

2. **Surety Bond** – Each applicant must submit a Corporate Surety Bond with a minimum amount of \$50,000.00. It must be issued for two consecutive years and begin in the month of expected license issuance, and expire on the last day of the same month, 2 years later. You must submit the **ORIGINAL** Surety with the application. The **ORIGINAL** Surety Bond must be signed by the principal owner, or in the case of a partnership, both partners’ signature. The name reflected on the bond **MUST** be **EXACTLY** the same as the entity being licensed, and the address must be the physical address. The Power of Attorney letter **MUST** be attached.

3. **Zoning Compliance** – Written approval from the local zoning/land-use authority must be provided. In localities without zoning restrictions, a written statement to this effect must be obtained from the authorized county or municipal official. Typically, these statements are

prepared by the Office of the County Executive, or Office of the Municipality Mayor. The address must be reflected in the letter, and the letter must state that automobile sales are a permitted use.

4. **Business Tax** – A current business tax license issued by the County Clerk, and if applicable, a city county license must be obtained in the name of the licensee. The name must match exactly with the entity being licensed. If a d/b/a is being used, this must be reflected on the license. These licenses should be a “Class 2”.
5. **Financial Statement** – A compiled financial statement indicating a minimum net worth of \$10,000.00, accompanied by a compilation letter executed by a Certified Public Accountant (CPA) on the CPA’s letterhead along with the CPA’s license number, is required. The financial statement must be prepared in accordance with generally accepted accounting principles, and dated no earlier than twelve (12) months prior to the date of application. If the CPA is not licensed in the State of Tennessee, a copy of the CPA’s license must be furnished.
6. **Corporation/LLC/LLP/LP** – A copy of the charter or articles of organization of the entity as filed with the Tennessee Secretary of State’s office must be provided, or if an out-of-state corporation or LLC, provide a copy of the Certificate of Authority to do business in Tennessee. If it is your intention to sell on behalf of the dealership, even if you own 100% interest in the Corporation or are the only member of the LLC, you will be required to maintain a separate salesperson license. You must list any officer or member who owns more than 5% of the entity, and designate the percentage owned by each individual as well as identifying the managing partner and registered agent. If a corporation is publicly traded, it must identify itself as publicly traded in the appropriate box in the Motor Vehicle Dealer Application.
7. **Certificate of Liability Insurance** – A Certificate of Liability Insurance with a minimum of \$300,000.00 per occurrence, indicating Garage Liability, must be submitted with each application. The Certificate must indicate the complete name of the entity being licensed and must reflect the physical address of the entity. It must also include a policy number, policy period, and coverage must continue, in force, for the life of the license. The Tennessee Motor Vehicle Commission must be reflected as the certificate holder. Additional information regarding Worker’s Comp Insurance requirements can be found at <http://www.state.tn.us/labor-wfd/wcomp.shtml>
8. **Service Agreement** – If no mechanical repair facility is located on-site, a Service Agreement with an operation repair garage, within a reasonable distance from the licensee’s location, must be provided and maintained during the licensing period. Any change in the designated facility must be reported to the Commission within 30 days of the change.
9. **Sales Tax** – A copy of the current Sales & Use Tax Certificate, obtained from the Department of Revenue, with the identification number and exact name and physical address of the licensed entity must be provided. If a d/b/a or assumed name is being used, it must appear on the certificate.
10. **Financial Background Disclosure** – The principal owner, directors and all persons owning more than five percent (5%) of the outstanding shares or stock issued by a corporation, LLC, LLP, or LP must complete the financial background disclosure form.

11. **Signage/Photos** – Signs must contain letters a minimum of eight (8) inches in height and include the entire dealership name, including INC, LLC, LLP, or LP, if applicable. The sign must be permanently installed and clearly visible from the road. Banners are temporary in nature, and do not satisfy this requirement. If the dealer principal is engaged in an additional business along with the motor vehicle dealership, a separate sign can be posted advertising the second business. Photos being provided as part of the application should be in digital format and include the entire display lot, sign, hours and days of operation, phone number, office, and restroom facilities. You must also provide photos from a “street view” which show the building in its entirety, and all entrances and exits. If photos cannot be provided in digital format, all photos should be 8.5 X 11 or affixed to 8.5 X 11 paper, making sure the entire photo is firmly attached on all sides.

12. **Franchised Vehicle Dealers** – A letter of acknowledgment sent from the Manufacturer(s) or Distributor(s) of the product or line-make awarding the applicant a franchise agreement(s) must be provided. The agreement **MUST** identify the specific line-makes the applicant is licensed to sell and define the relevant market area. If the relevant market area is not confined to geographic boundaries, the agreement must state that fact. The dealership name must be the same as the entity/name to whom the franchise was granted. A sworn statement containing the labor rate to be charged retail customers and the labor rate to be charged to the manufacturer(s) for warranty repairs must be provided. Thereafter, any change in the labor rate must be reported in writing to the Commission within ten (10) days after the change.

13. **Salesperson Applications** – All salesperson applications, including the Eligibility Verification Form(s), should be submitted with the initial motor vehicle dealer application.

14. **Conviction Record** – If any owner, officer or director of a corporation has been convicted of a felony, the applicant must furnish a copy of the final judgment order/disposition signed by the court of issuance in the jurisdiction of the conviction. The final judgment order must detail how the felony was disposed, when disposition occurred, and contain the signature of the judge. Evidence of probation or parole release requirements from the place of incarceration must accompany the applicable order. In the event an expungement order has been granted, it may be required to be submitted if your documentation reflects the felony conviction has not yet been discharged. In the event the applicant has obtained a re-employability certificate, please attach it to the other documents related to the charge(s).

15. **Floor Plan Form** – Applicants are required to provide the Commission with, and keep current, the names of any inventory financiers, i.e. “floor planners” used by the dealership. Should floor planners be added or deleted after licensure, the dealer is responsible for advising the Commission of the change within 30 days, using the provided floor plan form.

16. **Dealer Licensing Fees** –

Franchise Vehicle Dealer License Fees.....	\$400 per line make
Used Vehicle Dealer License Fees.....	\$400
Franchise Motorcycle Dealer License Fees.....	\$400 per line make
Salesperson License Fees.....	\$35
Re-Inspection Fees.....	\$400
Re-Location Fees.....	\$400

Applicable Licensing fees are payable by cash, check, money order, or certified check. Checks are to be payable to the Tennessee Motor Vehicle Commission. Cash must be paid at the Cashier's Office of the Department of Commerce and Insurance, located at 500 James Robertson Parkway, 1st Floor, Davy Crockett Tower.

DO NOT MAIL CASH. Enforcement Agents will NOT accept any payments.

After all proper documentation of the above-requirements has been submitted, on-site inspection of the facility will be conducted. After inspection of the facility, a final review of the application, background, supporting documentation and facility findings is required. Please note that the Field Enforcement Agent is ONLY inspecting your physical location at this time, and does not have the authority to authorize the applicant to begin sales activity. Final eligibility determination requires satisfaction of **ALL** items identified above. Until all required documents have been submitted, the license application final eligibility cannot be determined.

Per Tennessee Comprehensive Rules and Regulations 0960-1-.14, Should the applicant fail to provide all required documents within 90 days from the application receipt date, the documents will be returned. If the applicant wishes to proceed, they must resubmit the fee and application in its entirety.

In the event the facility is deemed inadequate and fails to meet the minimum requirements, the application will be **DENIED**. A \$400 fee will be required upon any re-application and/or re-inspection.

Upon final review and approval, the license will be issued. Licenses should be received no later than fourteen (14) business days from the date of approval. Every effort is made to expedite the license issuance.

Appendix C: 50 State Review—Boat Registration and Titling Requirements

State	Boats Registered, 2016	Scope of Boat Registration System	Scope of Boat Titling System	Boat Titling Fee
Alabama	261,741	All motorboats, sailboats, and rental boats	No boat titling	-
Alaska	51,144	All undocumented motorized boats	No boat titling	-
Arizona	123,263	All motorized watercraft	No boat titling	-
Arkansas	189,514	All watercraft	No boat titling	-
California	697,412	All motorboats; sailboats over 8 feet in length	All sail-powered vessels over 8 feet in length and every motor-driven vessel, regardless of length, which is used or on the waters of this state are subject to titling.	\$20 for odd numbered years and \$10 for even numbered years
Colorado	84,676	All watercraft powered by motor or sail- sailboards are exempt	No boat titling	-
Connecticut	93,364	All motorboats; sailboats 19.5 feet in length or greater	Required to title and register the following types of vessels with a manufacturing date of 2017 and later: All boats with motors, sailboats that are 19 1/2 feet or longer, personal watercraft (e.g. Jet Skis)	\$25
Delaware	61,901	All motorboats	No boat titling	-
Florida	905,298	All boats must be registered except non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length	All boats must be titled except non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length	\$5.25 for electronic title and \$7.75 for paper title
Georgia	335,723	All motorboats; sailboats 12 feet in length or greater	No boat titling	-

50 State Review—Boat Registration and Titling Requirements

State	Boats Registered, 2016	Scope of Boat Registration System	Scope of Boat Titling System	Boat Titling Fee
Hawaii	11,238	All motorboats; sailboats 8 feet in length or greater	No boat titling	-
Idaho	87,211	All motorboats and sailboats	Title required for model year 2000 or newer with a permanently attached mode of propulsion (i.e. sail or inboard), and for all vessels more than 12 feet in length regardless of mode of propulsion. For all types listed that are required to be titled that are model year 1999 and older, titling is optional unless the vessel is being financed, in which case it must be titled.	\$14
Illinois	242,275	All motor and sail powered boats	All motor and sail powered vessels require titling.	\$10
Indiana	209,622	All motorized boats	All motorized boats must be titled.	\$15
Iowa	205,145	All watercraft except inflatables under 7 feet in length and canoes/kayaks under 13 feet in length	All vessels 17 feet or more must be titled, exempting canoes, kayaks, and inflatable vessels.	\$11.50
Kansas	81,243	All motorboats and sailboats	No boat titling	-
Kentucky	173,881	All motorboats, except electric motors 1 horsepower or less	Titling is required for all motorized boats whether or not such machinery is the principal source of propulsion.	\$9
Louisiana	306,689	All motorboats; sailboats more than 12 feet in length	Titling is required for vessels or outboard engines 25 horsepower and above that are being financed. Titling is <i>optional</i> for the following: (1) vessels valued in excess of \$2,500 and required to be numbered and transferred for the first time after July 2008; and (2) an outboard motor transferred for the first time on or after January 2011.	\$18

50 State Review—Boat Registration and Titling Requirements

State	Boats Registered, 2016	Scope of Boat Registration System	Scope of Boat Titling System	Boat Titling Fee
Maine	111,116	All motorboats	No boat titling	-
Maryland	176,207	All motorboats	Titling is required for all motorized boats.	\$2
Massachusetts	140,008	All motorboats	Titling is required for any vessel of 14 feet or greater in length propelled or designed to be propelled by machinery whether or not such machinery is permanently or temporarily affixed or is the principal source of propulsion.	\$15
Michigan	794,137	All watercraft except manually propelled vessels 16 feet or less in length, and privately owned non-motorized rafts, canoes, and kayaks	Titling is required for all vessels that are 20 feet in length or greater; and all vessels that have a permanently affixed engine must be titled. All other boats may be titled at the owner's option.	\$5
Minnesota	817,560	All watercraft except non-motorized boats ten feet or less in length, duck-boats during duck hunting season, and rice-boats during harvest season and seaplanes	Titling required for all vessels over 16 feet in length. The following are excluded: kayaks, canoes, row-type fishing boats, water fowl boats, and life boats.	\$22
Mississippi	132,441	All motorboats and sailboats	Boat titling is entirely optional.	\$12.70
Missouri	293,185	All motorboats, sailboats over 12 feet in length	Titling is required for sailboats over 12 feet in length and for all motorized boats. Titling is required for all outboard motors regardless of horsepower, excluding trolling and electric outboard motors.	\$7.50
Montana	68,229	All motorboats; sailboats over 12 feet in length	Titling is required for sailboats over 12 feet in length and for all motorized boats.	\$10

50 State Review—Boat Registration and Titling Requirements

State	Boats Registered, 2016	Scope of Boat Registration System	Scope of Boat Titling System	Boat Titling Fee
Nebraska	87,596	All motorboats	Titling is required for all motorized vessels, except those manufactured prior to 11/1/1972.	\$10
Nevada	42,426	All motorboats	Titling is required for all motorized vessels.	\$20
New Hampshire	94,806	All motorboats; sailboats 12 feet in length or greater	No boat titling	-
New Jersey	150,968	All watercraft except non-motorized boats less than 12 feet in length and canoes, kayaks, racing shells, and rowing sculls	All boats over 12 feet in length must be titled, except for lifeboats, canoes, kayaks, inflatable boats, surfboards, rowing sculls, racing shells, and dinghies used solely for direct transportation between a vessel and shore.	\$60 (\$85 for a financed boat)
New Mexico	33,780	All motorboats and sailboats	Titling is required for motorized vessels 10 feet and over and sailboats 10 feet and over. Titling is optional for all other vessels.	\$10
New York	448,480	All motorboats	Titling is required for all motorized vessels 14 feet and over with model year 1987 and newer.	\$10
North Carolina	367,225	All motorboats; sailboats more than 14 feet in length	Titling is required for the following vessels purchased or transferred after 1/1/2007: motorized vessel or sailboats 14 feet or longer and any personal watercraft (e.g., jet skis). Any other vessel may be titled at the owner's option. [Note that from 1990 to 2006, boat titling was optional in North Carolina]	\$35
North Dakota	67,022	All motorized boats	No boat titling	-

50 State Review—Boat Registration and Titling Requirements

State	Boats Registered, 2016	Scope of Boat Registration System	Scope of Boat Titling System	Boat Titling Fee
Ohio	505,082	All watercraft	Titling is required for all watercraft 14' or more, for watercraft less than 14' with permanently affixed engines with 10 horsepower or greater, and for outboard motors 10 horsepower or greater.	\$15
Oklahoma	202,388	Registration is required for all vessels (excluding canoes, kayaks, and paddleboats) and for outboard motors greater than 10 HP.	Titling is required for all vessels (excluding canoes, kayaks, and paddleboats) and for outboard motors greater than 10 horsepower.	\$2.25
Oregon	156,168	All motorboats; sailboats more than 12 feet in length	Titling is required for all motorized vessels and for sailboats 12 feet or greater.	\$50
Pennsylvania	315,503	All motorboats and certain non-powered craft using lakes or access areas owned by the PA State Fish & Boat Commission	Titling is required for all power-driven boats with a model year of 1997 or newer, excluding boats less than 14 feet in length that are powered by an outboard motor and all inboard vessels (including PWCs) with a model year of 1997 or newer, regardless of length. Titling is optional for all non-required vessels.	\$15
Rhode Island	40,178	All motorboats and rowboats over 12 feet	Titling is required for all vessels 14 feet and greater, except for human-powered inflatable vessels, surfboards, and rowboats.	\$25
South Carolina	518,269	All motorized and sail powered boats	Title is required for all sailboats and motorized boats.	Fee Schedule
South Dakota	59,485	All motorboats; all other boats over 12 feet in length	Titling is required for all motorized boats of any length and for all other boats over 12 feet, excluding canoes, kayaks, inflatable vessels, sailboards, and seaplanes.	\$10

50 State Review—Boat Registration and Titling Requirements

State	Boats Registered, 2016	Scope of Boat Registration System	Scope of Boat Titling System	Boat Titling Fee
Tennessee	254,091	All motorboats and sailboats	No boat titling	-
Texas	573,425	All motorboats. All sailboats over 14 feet in length.	Titling is required for all motorized boats, regardless of length, all sailboats 14 feet or greater, and all outboard motors.	\$27
Utah	65,873	All motorboats and sailboats	Titling is required for all vessels with a model year of 1985 or newer, except for canoes and inflatables vessels with outboard motors of 25 horsepower or less. Titling is required for all outboard motors with a model year of 1985 or newer and more than 25 horsepower.	\$6
Vermont	29,353	All motorboats	Titling is required for motorized vessels that are 16 feet or more and less than 15 years old. Canoes, kayaks, or similar vessels that are manually propelled or equipped with a motor less than 10 horsepower are exempt.	\$22
Virginia	233,236	All motorboats	Titling is required all motorized vessels of any length and for sailboats over 18 feet.	\$7
Washington	234,035	All motorboats except motorboats less than 16 feet with motors less than 10 horsepower	Titling is required for all sailboats over 16 feet and for all motorized boats over 16 feet in length and with an engine of 10 horsepower or greater. Boats less than 16 feet in length with a motor of 10 horsepower or less are exempt if used only on non-federal waters.	\$21

50 State Review—Boat Registration and Titling Requirements

State	Boats Registered, 2016	Scope of Boat Registration System	Scope of Boat Titling System	Boat Titling Fee
West Virginia	57,305	All motorboats	Titling is required for all motorized vessels purchased in West Virginia by the current owner after July 1, 1989.	\$15
Wisconsin	611,240	All motorboats; sailboats over 12 feet in length	Titling is required for vessels 16 feet or greater in length.	\$5
Wyoming	27,288	All motorboats and sailboats	Titling is required for all motorized boats.	\$15

Source of State Recreational Boat Registration Numbers: United States Coast Guard, Recreational Boating Statistics, 2016. Note that commercial vessels are not counted in this table. Tennessee's registration total would include an additional 391 boats if commercial boats were included. All other information comes from TACIR staff analysis of other states' laws.

Appendix D: Tennessee Boat Registration Statistics

2016 Tennessee Vessel Registration by Length Category					
	Length Category (feet)				
Motorized Vessel Types	< 16	16 < 26	26 < 40	40 < 65	65+
Airboat	0	0	0	0	0
Auxiliary Sail	280	559	238	6	1
Cabin Motorboat	29	2,064	2,570	605	19
Houseboat	10	60	553	1,524	855
Inflatable Boat	2	0	0	0	0
Open Motorboat	57,082	155,923	4,319	208	97
Personal Watercraft	24,909	316	8	0	0
Pontoon Boat	0	20	1	0	0
Other	65	117	2	0	1
Non-Motorized Vessel Types	< 16	16 < 26	26 < 40	40 < 65	65 +
Paddle Craft	2	0	0	0	0
Rowboat	4	0	0	0	0
Sail	275	304	23	0	0
Other	854	178	6	0	2
Total for each category	83,512	159,541	7,720	2,343	975
Total Recreational Vessel Registration	254,091				
Total Commercial Vessel Registration	389				
Total Vessels Registered in TN	254,480				

Source: US Coast Guard and Tennessee Wildlife Resources Agency.

Appendix E: Tennessee's Legal Requirements of Boating

Tennessee: The Legal Requirements of Boating

Your Vessel's Certificate of Number and Validation Decals

- ◆ Requirements for vessel registration vary from state to state. In Tennessee, you must have a Tennessee Certificate of Number and validation decals to operate your vessel legally on public waters in Tennessee. The only exceptions are:
 - Vessels propelled only by paddles or oars
 - Vessels registered in other states using Tennessee waters for 60 days or less
- ◆ An application for the Certificate of Number is obtained after paying sales tax to the dealer or county clerk's office. The application then is mailed to the Tennessee Wildlife Resources Agency or dropped off at the Nashville TWRA sales office.
- ◆ The Certificate of Number (pocket-sized registration card) must be on board and available for inspection by an enforcement officer whenever the vessel is operated.
- ◆ The registration number and validation decals must be displayed as follows.
 - Number must be painted, applied as a decal, or otherwise affixed to both sides of the bow where no other number may be displayed.
 - Number must read from left to right on both sides of the bow.
 - Number must be in at least three-inch-high, plain, vertical **BLOCK** letters.
 - Number's color must contrast with its background.
 - Letters must be separated from the numbers by a hyphen or a space: **TN-3717-ZW** or **TN 3717 ZW**.
 - Decals may be placed to the left or right of the registration number on both sides of the bow.
- ◆ If your vessel requires registration, it is illegal to operate it or allow others to operate your vessel unless it is registered and numbered as described above.

Other Facts About Registering Your Vessel

- ◆ The Certificate of Number is valid for one, two, or three years, at the option of the owner.
- ◆ The owner of a numbered vessel must notify TWRA within 15 days if:
 - You change your address.
 - The vessel is lost, stolen and/or recovered, destroyed, abandoned, or sold.
- ◆ Vessels registered in another state may operate on Tennessee waters for 60 consecutive days before Tennessee registration is required.
- ◆ If you lose or destroy your Certificate of Number or validation decals, you must apply to the TWRA for a duplicate and submit a processing fee.
- ◆ Larger recreational vessels owned by U.S. citizens may (at the option of the owner) be documented by the U.S. Coast Guard (USCG). Call the USCG at 1-800-799-8362 for more information.
 - Documented vessels must be registered in Tennessee and carry the Certificate of Number on board, but are not required to display the registration number.
 - The validation decals issued by the TWRA must be placed on both sides of the documented vessel on the windows closest to the main operator station.
 - If the vessel does not have windows, the decals must be placed in the immediate vicinity of the operator and must be clearly visible to enforcement officers.
 - Sailboats may place the decals on both sides of the bottom of the main mast.



Certificate of Number

The Certificate of Number (pocket-sized registration card) must be carried on board the vessel whenever the vessel is operated.



Spaces or hyphens should appear here.



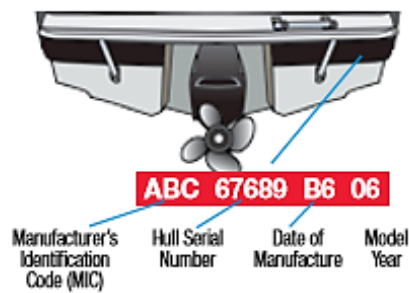
Validation Decal

(May be placed to left or right of the registration number)



PWCs also are required to display the certificate's number and validation decal.

Hull Identification Number



Hull Identification Number

- ◆ The Hull Identification Number (HIN) is a unique 12-digit number assigned by the manufacturer to vessels built after 1972.
- ◆ Hull Identification Numbers:
 - Distinguish one vessel from another—the same as serial numbers distinguish one car from another.
 - Are engraved in the fiberglass or on a metal plate permanently attached to the transom.
- ◆ You should write down your HIN and put it in a place separate from your vessel in case warranty problems arise or your vessel is stolen.



TWRA Boating Safety Education Certificate

Those born after January 1, 1989, must have on board the Boating Safety Education Certificate issued by TWRA (shown above) whenever the vessel is in operation. This is the only certificate that will be recognized as meeting the requirements of the law for those born after January 1, 1989. The certificate will not expire but may be revoked in a court of law.

Who May Operate a Vessel

- ◆ **Those born after January 1, 1989**
 - Tennessee residents must successfully complete the TWRA Boating Safety Exam and carry on board the Boating Safety Education Certificate issued by the Tennessee Wildlife Resources Agency (TWRA) when operating a vessel on Tennessee waters. Only the TWRA-issued certificate will be accepted as meeting the requirements of Tennessee law. This does not apply to non-residents or persons who rent a vessel.
 - Non-residents within this age category must show proof of successful completion of a NASBLA (National Association of State Boating Law Administrators) approved boating safety course.
 - Operators of vessels powered by engines of 8.5 horsepower or less and operators of sailboats under sail alone are not required to possess the Boating Safety Education Certificate.
- ◆ **To operate a motorized vessel of more than 8.5 horsepower**
 - Those less than 12 years old must have a supervisor on board who is at least 18 years old and able to take immediate control of the vessel. The supervisor, if born after January 1, 1989, also must have a Boating Safety Education Certificate issued by TWRA.
 - Those 12 years old or older operating alone must have a Boating Safety Education Certificate issued by TWRA.
- ◆ **Those less than 16 years of age** may not *rent* a personal watercraft (PWC).

Source: Boat Tennessee Course at <https://www.boat-ed.com/tennessee/>.

Appendix F: Tennessee Boat Registration Fee Schedule

Boat Length	1 Year	2 Years	3 Years
16 feet and under	\$13	\$24	\$35
Over 16 feet to less than 26 feet	\$25	\$48	\$71
26 feet to less than 40 feet	\$38	\$72	\$107
40 feet and over	\$51	\$97	\$142
Dealer/Manufacturer	\$32	\$64	\$95
Duplicate/Replacement	\$7		

Source: Tennessee Wildlife Resources Agency, "Application for Boat Certificate of Number."

Appendix G: Uniform Certificate of Title for Vessels Act (UCOTVA)

UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTIETH YEAR
VAIL, COLORADO
JULY 7 – JULY 13, 2011

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 4, 2013

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The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 120th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

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UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

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UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

Prefatory Note

Background

Record ownership of vessels in the United States is governed by a composite of state and federal law. Some large commercial vessels – those that measure at least five net tons, owned by a U.S. entity, and used in coastwise trade or fisheries – must be documented with the United States Coast Guard National Vessel Documentation Center. *See* 46 U.S.C. §§ 12102, 12103. Some other vessels – those that measure at least five net tons, owned by a U.S. entity, and used solely for recreational purposes – may but need not be documented with the U.S. Coast Guard.

Documentation of a vessel with the Coast Guard is a way of identifying the owners of the vessel and is often required by marine lenders as a condition to financing. Only a documented vessel can be subject to a “preferred mortgage.” 46 U.S.C. §§ 31301(6), 31321, 31322. A preferred mortgage is a perfected lien, *see* 46 U.S.C. § 31321(a)(1), that has priority over certain (non-preferred) maritime liens and all non-maritime liens in an *in rem* admiralty foreclosure. *See* 46 U.S.C. §§ 31301(5), 31325, 31326. Federal law prohibits states from issuing a certificate of title for a documented vessel and requires that any certificate of title previously issued for a documented vessel be surrendered. 46 U.S.C. § 12106.

Fewer than one percent of vessels in the United States are documented; most of the remainder are pleasure boats operated as undocumented vessels. Federal law requires that most undocumented vessels equipped with propulsion machinery be issued a number by the state in which the vessel is principally operated. 46 U.S.C. § 12301. The numbering regulations are designed to help improve boating safety and to deter, discover, and impede theft. In order to share in certain federal funds, all fifty states and the territories have established boat numbering systems that are approved as complying with the federal requirements. *See* 33 C.F.R. Part 3.

Although all the states now comply with the federal regulations on the numbering of vessels, there is far less uniformity with respect to state certificate of title laws for undocumented vessels. Thirty-three states and the District of Columbia require certain undocumented vessels to be covered by a certificate of title. Sixteen states have no certificate of title law for vessels. And one state, Mississippi, gives the owners of undocumented vessels the option of getting a certificate of title. Even among the states that require a certificate of title for undocumented vessels, the variation in the scope of those laws is substantial. The laws vary with respect to the size and type of vessels covered, the location or use of the vessel subject to the law, and many other details. Moreover, many of the state titling laws do not clearly delineate how compliance or failure to comply affects the rights of the owner and others claiming an interest in the vessel. As a result, the principal objectives of a titling law – (i) to deter and impede theft; and (ii) to facilitate ownership transfers and financing – are undermined.

Congress enacted the Vessel Identification System (VIS) in 1988 to create a central database of information, maintained by the Coast Guard, about vessels and their owners. The database is designed to be used by the public for law enforcement and other purposes relating to

the ownership of vessels. 46 U.S.C. § 12501. States are not required to make their boat numbering and titling information available to VIS, but they are encouraged to do so. This encouragement comes in a grant of preferred mortgage status to a security interest in a vessel perfected under a state titling law that satisfies applicable federal requirements and is approved by the Coast Guard. 46 U.S.C. § 31322(d)(1). Currently, 31 states and territories are participating in the information exchange aspects of VIS. However, no state's certificate of title law for undocumented vessels has received the requisite Coast Guard approval. One of the main purposes of this act is to provide states with a model that the Coast Guard will approve.

It is worth noting that one of the purposes of VIS is to facilitate commerce in recreational vessels by permitting public access to basic information about vessels numbered and titled under state law, as well as about documented vessels. However, while transactional information about documented vessels was and remains publicly available, transactional information about state-titled vessels in the VIS database is generally not available to the public. As a result, VIS has not resolved difficulties occasionally experienced by vessel buyers and lenders in transactions involving vessels that have moved into or out of federal documentation or from one state to another. This act seeks to remedy this problem by providing uniform rules on what information states will make available to those seeking to determine the ownership of a vessel.

Purposes of the Act

This act is modeled somewhat on the Uniform Certificate of Title Act, but draws heavily from other sources as well. Chief among these other sources are: (i) Coast Guard regulations relating to the approval of state certificate of title laws for the purposes of the VIS; and (ii) a Model Act for Vessel Titling, proposed by the Vessel Identification Registration and Titling Committee of the National Association of State Boating Law Administrators.

The principal objectives of the act are to: (i) qualify as a state titling law that the Coast Guard will approve; (ii) facilitate transfers of ownership of a vessel; (iii) deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel; (iv) accommodate existing financing arrangements for vessels; (v) work seamlessly with the Uniform Commercial Code, most notably Articles 2 and 9; (vi) manage, to the extent possible, the complications that can arise from a vessel's transition in or out of federal documentation; (vii) provide clear rules on the consequences of compliance or noncompliance; (viii) impose minimal or no new burdens or costs on state titling offices; and (ix) protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty or sinking has caused significant damage to the vessel's hull integrity.

The act's branding rules may be its greatest innovation. Few states currently brand the title of vessels, with the result that vessels with hidden hull damage can be resold after cosmetic repairs without disclosure of the damage. This problem can be quite significant after a major hurricane or other widespread casualty. By establishing a model vessel brand, this act provides a mechanism for consumers, insurers, and lenders to receive valuable information, which in turn can prompt further investigation, help ensure that necessary repairs are made, and aid in boating safety. The act creates two processes for branding titles, one for owners of record and a

supervening process for insurers. To maintain simplicity, however, the two processes each yield the same, single brand: “hull-damaged.” The act encourages compliance with its branding rules by imposing an administrative penalty on owners and insurers who fail to comply.

UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Certificate of Title for Vessels Act.

SECTION 2. DEFINITIONS.

(a) In this [act]:

(1) “Barge” means a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.

(2) “Builder’s certificate” means a certificate of the facts of build of a vessel described in 46 C.F.R. Section 67.99[, as amended].

(3) “Buyer” means a person that buys or contracts to buy a vessel.

(4) “Cancel”, with respect to a certificate of title, means to make the certificate ineffective.

(5) “Certificate of origin” means a record created by a manufacturer or importer as the manufacturer’s or importer’s proof of identity of a vessel. The term includes a manufacturer’s certificate or statement of origin and an importer’s certificate or statement of origin. The term does not include a builder’s certificate.

(6) “Certificate of title” means a record, created by the office under this [act] or by a governmental agency of another jurisdiction under the law of that jurisdiction, that is designated as a certificate of title by the office or agency and is evidence of ownership of a vessel.

(7) “Dealer” means a person, including a manufacturer, in the business of selling vessels.

(8) “Documented vessel” means a vessel covered by a certificate of

documentation issued pursuant to 46 U.S.C. Section 12105[, as amended]. The term does not include a foreign-documented vessel.

(9) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) “Electronic certificate of title” means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.

(11) “Foreign-documented vessel” means a vessel the ownership of which is recorded in a registry maintained by a country other than the United States which identifies each person that has an ownership interest in a vessel and includes a unique alphanumeric designation for the vessel.

(12) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(13) “Hull damaged” means compromised with respect to the integrity of a vessel’s hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel’s hull.

(14) “Hull identification number” means the alphanumeric designation assigned to a vessel pursuant to 33 C.F.R. Part 181[, as amended].

(15) “Lien creditor”, with respect to a vessel, means:

(A) a creditor that has acquired a lien on the vessel by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(16) “Office” means [insert name of the department or agency that creates certificates of title in this state].

(17) “Owner” means a person that has legal title to a vessel.

(18) “Owner of record” means the owner indicated in the files of the office or, if the files indicate more than one owner, the one first indicated.

(19) “Person” means an individual, corporation, business trust, estate, trust, statutory trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) “Purchase” means to take by sale, lease, mortgage, pledge, consensual lien, security interest, gift, or any other voluntary transaction that creates an interest in a vessel.

(21) “Purchaser” means a person that takes by purchase.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Secured party”, with respect to a vessel, means a person:

(A) in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) that is a consignor under [UCC Article 9]; or

(C) that holds a security interest arising under [UCC Section 2-401, 2-505, 2-711(3), or 2A-508(5)].

(24) “Secured party of record” means the secured party whose name is indicated as the name of the secured party in the files of the office or, if the files indicate more than one

secured party, the one first indicated.

(25) “Security interest” means an interest in a vessel which secures payment or performance of an obligation if the interest is created by contract or arises under [UCC Section 2-401, 2-505, 2-711(3), or 2A-508(5)]. The term includes any interest of a consignor in a vessel in a transaction that is subject to [UCC Article 9]. The term does not include the special property interest of a buyer of a vessel on identification of that vessel to a contract for sale under [UCC Section 2-501], but a buyer also may acquire a security interest by complying with [UCC Article 9]. Except as otherwise provided in [UCC Section 2-505], the right of a seller or lessor of a vessel under [UCC Article 2 or 2A] to retain or acquire possession of the vessel is not a security interest, but a seller or lessor also may acquire a security interest by complying with [UCC Article 9]. The retention or reservation of title by a seller of a vessel notwithstanding shipment or delivery to the buyer under [UCC Section 2-401] is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined by [UCC Section 1-203].

(26) “Sign” means, with present intent to authenticate or adopt a record, to:

(A) make or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol,

sound, or process.

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28) “State of principal use” means the state on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a

calendar year.

(29) “Title brand” means a designation of previous damage, use, or condition that must be indicated on a certificate of title.

(30) “Transfer of ownership” means a voluntary or involuntary conveyance of an interest in a vessel.

(31) “Vessel” means any watercraft used or capable of being used as a means of transportation on water, except:

(A) a seaplane;

(B) an amphibious vehicle for which a certificate of title is issued pursuant to [state motor vehicle certificate of title act] or a similar statute of another state;

(C) watercraft less than 16 feet in length and propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower;

(D) watercraft that operate only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;

(E) a stationary floating structure that:

(i) does not have and is not designed to have a mode of propulsion of its own;

(ii) is dependent for utilities upon a continuous utility hookup to a source originating on shore; and

(iii) has a permanent, continuous hookup to a shoreside sewage system;

(F) watercraft owned by the United States, a state, or a foreign

government or a political subdivision of any of them; and

(G) watercraft used solely as a lifeboat on another watercraft.

(32) “Vessel number” means the alphanumeric designation for a vessel issued pursuant to 46 U.S.C. Section 12301[, as amended].

(33) “Written certificate of title” means a certificate of title consisting of information inscribed on a tangible medium.

(b) The following definitions and terms also apply to this [act]:

(1) “Agreement”, [UCC Section 1-201(b)(3)].

(2) “Buyer in ordinary course of business”, [UCC Section 1-201(b)(9)].

(3) “Conspicuous”, [UCC Section 1-201(b)(10)].

(4) “Consumer goods”, [UCC Section 9-102(a)(23)].

(5) “Debtor”, [UCC Section 9-102(a)(28)].

(6) “Knowledge”, [UCC Section 1-202].

(7) “Lease”, [UCC Section 2A-103(1)(j)].

(8) “Lessor”, [UCC Section 2A-103(1)(p)].

(9) “Notice”, [UCC Section 1-202].

(10) “Representative”, [UCC Section 1-201(b)(33)].

(11) “Sale”, [UCC Section 2-106(1)].

(12) “Security agreement”, [UCC Section 9-102(a)(73)].

(13) “Seller”, [UCC Section 2-103(1)(o)].

(14) “Send”, [UCC Section 1-201(b)(36)].

(15) “Value”, [UCC Section 1-204].

(c) The definitions in subsections (a) and (b) do not apply to any state or federal law

governing licensing, numbering, or registration if the same term is used in that law.

Legislative Note: *In states in which the constitution does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted from paragraphs (a)(2), (8), (14), and (32).*

Comment

1. The definition for “barge” in paragraph (a)(1) facilitates an exemption from this act. *See* Section 6(b)(3). Under federal law, barges (non-powered vessels) of 100 tons or less are not required to be documented. They also are exempted from the numbering rules. *See* 46 U.S.C. § 12301. *See also* 33 C.F.R. §§ 173.11, 173.13, 174.11. More important, many existing barges are quite old and records of prior transfers may be difficult to locate or resurrect. For this reason, an owner of a barge is not required to obtain a certificate of title for it.

A “barge” is defined in 46 U.S.C. § 102 as any “non-self-propelled vessel.” Because this might include such things as sail boats and row boats, which are intended to be covered by this act, the federal definition is modified here to expressly exclude vessels propelled by sail or oar or fitted for propulsion by sail or oar. As a result, such vessels are not barges and are not exempted from compliance with this act under Section 6(b)(3).

2. The definition of “certificate of origin” in paragraph (a)(5) is derived from 33 C.F.R. § 187.7 but does not include a builder’s certificate. The reason for excluding builder’s certificates is that many vessels are covered by both a certificate of origin and a builder’s certificate, and the purposes of this act could be frustrated if the owner could use both documents to title the vessel in two different jurisdictions. If, however, a single document qualifies as both a builder’s certificate and a manufacturer’s certificate or statement of origin, that rationale does not apply and thus that document does qualify as a certificate of origin.

3. The definition of “dealer” in paragraph (a)(7) is more broad than the comparable definition in 33 C.F.R. § 187.7. That is because there should be no need for the dealer to be engaged in the business of buying vessels or to have an established place of business. A shipyard or other manufacturer can qualify as a dealer.

4. The definition of “hull damaged” in paragraph (a)(13) deals with the obligation of an owner or insurer to brand the title. *See* Section 10(a), (c). Paragraph (a)(13) does not exhaustively list the types of casualties that can compromise the integrity of a vessel’s hull; it merely describes some of the events that can do so. A qualifying casualty need not be an event of nature; vandalism and terrorism can compromise the integrity of a vessel’s hull. However, damage resulting from routine operation is not something that makes a vessel hull damaged. Similarly, “the sinking of a vessel in a manner that creates a significant risk that the integrity of the vessel’s hull has been compromised” is not something that occurs merely because the vessel is swamped during its normal operation. The distinction between “sinking” and “swamping” is a matter of buoyancy. A vessel sinks when it loses sufficient buoyancy to settle below the surface of the water. A vessel is swamped when it is filled with water but retains sufficient buoyancy to

remain on or at the surface.

Once a vessel is hull damaged, it remains hull damaged for branding purposes even though it is repaired. Thus, for example, if a vessel is sunk in a manner that creates a significant risk that the integrity of the vessel's hull has been compromised, the vessel remains damaged even after it is raised and repaired. As a result, the brand "hull damaged" is indelible. A branded vessel remains branded forever. *See* Section 7 comment 4.

5. Paragraph (a)(16) defines "office" to be the office that creates certificates of title for vessels. The office need not be the same authority in the state that issues numbers for vessels pursuant to 46 U.S.C. chapter 123 and 33 C.F.R. parts 173 and 174.

6. Paragraph (a)(29) defines "title brand" to include any designation of damage, use, or physical condition that must by law be indicated in a certificate of title. This act provides for only one title brand: "hull damaged." *See* Sections 2(a)(13) and 10. However, other brands created under the law of another state may need to be noted on a certificate issued under this act. *See* Sections 7(b)(9), 9(a)(7).

7. Paragraph (a)(30) should be read in conjunction with paragraph(a)(17). Only an owner has an ownership interest, and thus an ownership interest refers to the legal title of an owner. An ownership interest does not include an equitable or beneficial ownership interest. It also does not include a security interest or the interest of a lessee in a lease. There can, however be multiple owners, and a transfer of the interests of one, some, or all of them would be a transfer of ownership.

8. The definition of "vessel" in paragraph (a)(31) differs slightly from the similar definition in 33 C.F.R. Section 187.7, due principally to the exclusions in subparagraphs (a)(31)(B) through (G). These exclusions are based on the determination that the purposes of this act would not be served by requiring a certificate of title for the types of watercraft described. This determination has no relevance to the state laws and regulations regarding vessel numbering, and pursuant to subsection (c), these exclusions do not apply to such laws and regulations. The exclusions should not present a problem under 33 C.F.R. Section 187.304 because that regulation permits states to exempt classes of watercraft from its certificate of title statute.

Subparagraphs (A) and (B) of paragraph (a)(31) serve the same purpose: they exclude from the scope of this act vessels that are covered by some other titling law, such as the Federal Aviation Act or a state's motor vehicle certificate of title act.

Subparagraph (C) is derived from numerous state statutes that limit the type of watercraft for which a certificate of title is required. Several states do not title watercraft less than a designated length, ranging from 8-26 feet. Several do not title non-motor-powered watercraft. And some do not title non-motor-powered watercraft of less than a designated length. This act follows the last approach. Unless some other exclusion applies, all vessels of at least 16 feet in length are covered and all vessels propelled by an engine of at least 10 horsepower are covered.

Only those vessels that are both less than 16 feet in length and not mechanically powered by an engine of at least 10 horsepower are excluded from coverage under this act by virtue of subparagraph (C). For this purpose, it does not matter whether the engine is inboard or outboard.

Subparagraph (D) is designed to exclude watercraft used in fixed rides at theme parks. It does not cover a ferry attached to a cable because, even with the cable, the ferry does not operate on a manufactured course. Subparagraph (E) excludes non-powered floating residences that are fixed to the shore. Most such residences would fail to satisfy the initial language in the definition, in that they are not “used or capable of being used as a means of transportation on water.” Nevertheless, to avoid any confusion they are expressly excluded.

9. Vessels are defined to consist solely of certain types of watercraft. Accordingly, nothing in this act deals with fishing licenses or other intangible rights or property appurtenant to a vessel. *See* Section 15 comment 7.

10. The statement in subsection (c) that the definitions that follow “do not apply to any state or federal law governing licensing, numbering, or registration if the same term is used in that law” makes clear that the definitions used here do not apply to other laws relating to vessels. This is due, in part, to the fact that the definition of “vessel” in paragraph (a)(31) differs from the definition in 33 C.F.R. § 187.7, one of the regulations relating to the Vessel Identification System. Accordingly, the limiting language in subsection (c) is intended to make it clear that the definition of “vessel” in this Section applies solely to this act, and is not relevant to a state’s participation in the VIS.

SECTION 3. APPLICABILITY. Subject to Section 28, this [act] applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before [the effective date of this [act]].

SECTION 4. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY. Unless displaced by a provision of this [act], the principles of law and equity supplement its provisions.

Comment

This section is consistent with UCC Section 1-103(b). In addition, like the UCC, this act should be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing certificates of title;
- (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) to make uniform the law among the various jurisdictions.

This act should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as well as with the act as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

SECTION 5. LAW GOVERNING VESSEL COVERED BY CERTIFICATE OF TITLE.

(a) The local law of the jurisdiction under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate or becomes a documented vessel, even if no other relationship exists between the jurisdiction and the vessel or its owner.

(b) A vessel becomes covered by a certificate of title when an application for the certificate and the applicable fee are delivered to the office in accordance with this [act] or to the governmental agency that creates a certificate in another jurisdiction in accordance with the law of that jurisdiction.

Comment

Source: UCC Section 9-303.

1. This section provides which state's law governs a certificate of title. It is the law of the jurisdiction that created the certificate of title, from the moment the application is delivered to the titling office until such time as the vessel becomes covered by another certificate, which would typically occur when an application is delivered to the titling office of a different state or the vessel becomes a documented vessel.

2. There is no conflict between this section and Section 6, which requires the owner of a vessel to apply for a certificate of title in the state of principal use. Section 6 imposes a requirement on the owner. This section provides which state's law governs a certificate.

Example 1: Owner has a vessel for which this state is the state of principal use. Owner applies for and receives a certificate of title for the vessel from the titling office of another state. Owner has failed to comply with Section 6. Nevertheless, the law of the issuing state governs all issues relating to the certificate of title.

3. Pursuant to Article 9 of the Uniform Commercial Code, the only way to perfect a security interest in non-inventory collateral covered by a certificate of title statute is through compliance with the certificate of title act. *See* UCC Section 9-311(a)(2), (d). The scope of this rule is greatly affected by Article 9's choice of law rules. Under those rules, the law of the jurisdiction which created the certificate (or in which an application had been filed) is the law that governs, even if neither the debtor nor the goods are located there. *See* UCC Section 9-303. That law continues to control even if the debtor or the goods move, until the certificate expires by its own terms or a new certificate of title is applied for in a different state. *Id.*

These rules should work well with this act, which provides that the governing law is the law of the jurisdiction of principal use.

Example 2: Owner, who is not a dealer and who has granted a security interest in a vessel, applies in State A for a certificate of title for the vessel. Upon delivering that application to the titling office, the law of State A governs perfection and the effect of perfection, regardless of whether the debtor is located in State A. If the application includes the required information about the existing security interest, the security interest will be perfected.

Example 3: Same facts as Example 2 but State B later becomes the state of principal use. The law of State B requires the debtor to apply for a certificate of title from State B. If the debtor does not do so, then the law of State A will continue to govern the perfection of the security interest. As long as the law of State A does not invalidate its certificate of title when the principal use of the vessel changed to State B, the security interest will remain perfected.

4. Nothing in this section defers to the law of a foreign country. Thus, if a vessel titled in this state becomes a foreign-documented vessel, the law of this state continues to govern. This is true even though the office is required to and does cancel the certificate of title. *See* Section 8 comment 2.

Example 4: Owner, who is not a dealer and who has granted a security interest in a vessel, applies in State A for a certificate of title for the vessel. The application includes the required information about the existing security interest, with the result that the security interest thereby becomes perfected. The vessel subsequently becomes a foreign-documented vessel. The law of State A continues to govern, even if the office cancels the certificate of title. As a result, the security interest remains perfected.

SECTION 6. CERTIFICATE OF TITLE REQUIRED.

(a) Except as otherwise provided in subsections (b) and (c), the owner of a vessel for which this state is the state of principal use shall deliver to the office an application for a certificate of title for the vessel, with the applicable fee, not later than 20 days after the later of:

- (1) the date of a transfer of ownership; or
- (2) the date this state becomes the state of principal use.

(b) An application for a certificate of title is not required for:

- (1) a documented vessel;
- (2) a foreign-documented vessel;
- (3) a barge;
- (4) a vessel before delivery if the vessel is under construction or completed

pursuant to contract; or

- (5) a vessel held by a dealer for sale or lease.

(c) The office may not issue, transfer, or renew a certificate of number for a vessel issued pursuant to the requirements of 46 U.S.C. Section 12301[, as amended,] unless the office has created a certificate of title for the vessel or an application for a certificate for the vessel and the applicable fee have been delivered to the office.

Legislative Note: *The reference in subsection (c) to 46 U.S.C. Section 12301, “as amended” is intended to cover any future amendments to that provision that Congress may enact. That language appears in brackets because in some states this may be an unconstitutional delegation of state legislative power. Those states should not enact the bracketed language.*

This act deals only with titling; it does not cover registration, licensing, or numbering. States may wish to consider amending their registration, licensing, and numbering statutes, to condition registration, licensing, and numbering on compliance with Section 6 of this act.]

Comment

Paragraph (b)(3) provides that no application for a certificate of title is required for barges or for vessels under construction. This is because many old barges are not federally documented and the records necessary to title them may be unavailable or costly to obtain. *See* Section 2 comment 1. Accordingly, if no application for a certificate of title for such a vessel has been delivered to the office, the perfection of a security interest in the vessel is governed by UCC Article 9, not by this act. However, if an owner does apply for a certificate of title for the vessel, perfection must be through compliance with this act. *See* Section 15 comment 1.

Paragraph (b)(4) reflects the dual judgments that it is unnecessary for a certificate of title to be issued for a vessel under construction, even if the vessel is in the water for testing, and that requiring a certificate of title for such a vessel would undermine the efficacy of common financing arrangements. *See also* Section 15(g) (regarding perfection of a security interest in a vessel described in paragraph (b)(3) or (4)). Because Paragraph (b)(5) exempts dealers from having to apply for a certificate of title, paragraph (b)(4) is most relevant when the owner of the vessel is the buyer for whom the vessel is being constructed.

Paragraph (b)(5) provides that no application for a certificate of title is required for a vessel held by a dealer for sale or lease. This language, which is found in many certificate of title statutes and which is consistent with UCC Section 9-311(d), covers a vessel that a dealer is holding for sale or lease, but does not cover a vessel that the dealer is no longer holding because it is actually leased. Thus, a vessel that is the subject of a lease, whether a long-term transaction that may resemble a sale or a short-term charter, must be titled. In contrast, Section 15(g)(1) excludes from the perfection requirements of this act not only those vessels held by a dealer for sale or lease, but also vessels actually leased by a dealer in the business of selling vessels.

SECTION 7. APPLICATION FOR CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Sections 10, 15, 19, 20, 21, and 22, only an owner may apply for a certificate of title.

(b) An application for a certificate of title must be signed by the applicant and contain:

(1) the applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;

(2) the name and mailing address of each other owner of the vessel;

(3) the social security number or taxpayer identification number of each owner;

(4) the hull identification number for the vessel or, if none, an application for the issuance of a hull identification number for the vessel;

(5) the vessel number for the vessel or, if none issued by the office, an application for a vessel number;

(6) a description of the vessel as required by the office, which must include:

(A) the official number for the vessel, if any, assigned by the United

States Coast Guard;

(B) the name of the manufacturer, builder, or maker;

(C) the model year or the year in which the manufacture or build of the vessel was completed;

(D) the overall length of the vessel;

(E) the vessel type;

(F) the hull material;

(G) the propulsion type;

(H) the engine drive type, if any; and

(I) the fuel type, if any;

(7) an indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;

(8) a statement that the vessel is not a documented vessel or a foreign-documented vessel;

(9) any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;

(10) if the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;

(11) if the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address, the sales price, if any, and the date of the transfer; and

(12) if the vessel previously was registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered

or titled.

(c) In addition to the information required by subsection (b), an application for a certificate of title may contain an electronic communication address of the owner, transferor, or secured party.

(d) Except as otherwise provided in Section 19, 20, 21, or 22, an application for a certificate of title must be accompanied by:

(1) a certificate of title signed by the owner shown on the certificate and which:

(A) identifies the applicant as the owner of the vessel; or

(B) is accompanied by a record that identifies the applicant as the owner;

or

(2) if there is no certificate of title:

(A) if the vessel was a documented vessel, a record issued by the United States Coast Guard which shows the vessel is no longer a documented vessel and identifies the applicant as the owner;

(B) if the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or

(C) in all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of the office identifies the applicant as the owner.

(e) A record submitted in connection with an application is part of the application. The office shall maintain the record in its files.

(f) The office may require that an application for a certificate of title be accompanied by payment or evidence of payment of all fees and taxes payable by the applicant under law of this

state other than this [act] in connection with the application or the acquisition or use of the vessel.

Comment

Sources: UCOTA Section 9; 33 C.F.R. §§ 187.101, 187.103, 187.317.

1. Not all of the information submitted will appear on the certificate of title. For example, the principal residence of an owner and each owner's social security number or taxpayer identification number must be collected, *see* 33 C.F.R. § 187.101, but need not appear on the certificate. *Compare* 33 C.F.R. § 187.317. *See also* Section 9.

2. Paragraph (b)(5) implicitly requires that a hull identification number be issued for the vessel if the vessel does not already have one, as an imported antique might not. If the state agency that issues hull identification numbers is not the titling office, the applicant may, if the titling office permits, submit to the titling office a copy of the application for a hull identification number and evidence that the application has been submitted to the applicable state agency.

3. Federal regulations provide guidance on the terms to be used in describing the vessel type, hull material, propulsion type, engine drive type, and fuel type pursuant to Section 7(b)(6)(E)–(I). *See* 33 C.F.R. §§ 187.103, 187.317.

4. If the applicant knows that the vessel is hull damaged, paragraph (b)(10) requires the applicant to disclose the fact in the application. For this purpose, once a vessel is hull damaged, it remains hull damaged even though it is repaired. *See* Section 2 comment 4.

5. Subsection (e) imposes a duty on the office to maintain permanently any record submitted with an application. For example, if an applicant includes a certificate of origin in connection with the application, the office must maintain the certificate. This will facilitate a later decision by the owner to seek federal documentation of the vessel. Nothing in subsection (e) specifies the manner in which the office must maintain a record submitted with an application. Therefore, if the office is authorized to maintain records in electronic, photographic, or similar form, the office may maintain either the original or an image of the record. Section 11 imposes additional duties on the office.

6. Two versions of a sample application form follow. The first uses the terms currently authorized by the U.S. Coast Guard for the information required by subparagraphs (a)(6)(E)–(I). The second uses the revised terms that the Coast Guard has proposed. *See* 75 Fed. Reg. 25137, 25149 (May 7, 2010). Both versions contain a place for the applicant to list the state of principal use. Section 7 does not require that the state of principal use be identified on the application but a state may nevertheless wish to provide a place for it on the form as a means of alerting applicants that this is something to consider and affects in which state they should apply for a certificate. Both version of the application form also request the date of birth of the owner or owners. Section 7 does not require this information but a state may wish to request it on the application form for law enforcement purposes and as means – other than the social security

number – of differentiating among people with the same name.

Parts 5, 6, 7, and 8 of the form are illustrative of things a state may or may not wish to include on its application form. Section 7 does not require that states verify the hull identification number, request information about trade-in vessels, or include on the application anything relating to taxes or fees.

STATE OF [STATE NAME]
 [DEPARTMENT]
 [ADDRESS]

APPLICATION FOR CERTIFICATE OF TITLE

CHECK APPLICATION TYPE: ORIGINAL TRANSFER REPLACEMENT

1. OWNER/APPLICANT INFORMATION					
Do you want the certificate or title to be issued in electronic form? <input type="checkbox"/> Yes <input type="checkbox"/> No		Are you a [State] resident? Applicant/Owner: <input type="checkbox"/> Yes <input type="checkbox"/> No Co-Owner: <input type="checkbox"/> Yes <input type="checkbox"/> No		If jointly owned, may record title be transferred by owner of record alone? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Applicant/Owner 1's Name			Date of Birth	e-mail address	
Applicant/Owner 1's Mailing Address			City	State	Zip Code
Applicant/Owner 1's Principal Residence (if different from mailing address)			City	State	Zip Code
Owner 2's Name (use separate sheet to list additional owners)			Date of Birth	e-mail address	
Owner 2's Mailing Address			City	State	Zip Code
2. VESSEL DESCRIPTION					
Hull Identification Number	Make/Manufacturer/Builder	Year	Vessel Number (if any)	State	Length (in feet)
Jurisdiction(s) in Which Vessel Was Previously Registered or Titled (use additional sheet if needed)				Registration or Title Number	
Vessel Type <input type="checkbox"/> Open motorboat <input type="checkbox"/> Houseboat <input type="checkbox"/> Personal watercraft <input type="checkbox"/> Cabin motorboat <input type="checkbox"/> Pontoon <input type="checkbox"/> Canoe/kayak <input type="checkbox"/> Auxillary sail <input type="checkbox"/> Sail only <input type="checkbox"/> Rowboat <input type="checkbox"/> Other _____				Hull Material <input type="checkbox"/> Wood <input type="checkbox"/> Fiberglass <input type="checkbox"/> Aluminum <input type="checkbox"/> Rigid hull inflatable <input type="checkbox"/> Steel <input type="checkbox"/> Rubber/vinyl/canvas <input type="checkbox"/> Other _____	
Propulsion Type <input type="checkbox"/> Sail <input type="checkbox"/> Propeller <input type="checkbox"/> Air thrust <input type="checkbox"/> Waterjet <input type="checkbox"/> Manual		Fuel <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input type="checkbox"/> Diesel		Use of Vessel <input type="checkbox"/> Pleasure <input type="checkbox"/> Rent or lease <input type="checkbox"/> Commercial fishing <input type="checkbox"/> Charter fishing <input type="checkbox"/> Commercial passenger carrying <input type="checkbox"/> Other commercial operation <input type="checkbox"/> Dealer or manufacturer demonstration	
Is vessel currently federally documented?		<input type="checkbox"/> Yes <input type="checkbox"/> No			
Was vessel previously federally documented?		<input type="checkbox"/> Yes <input type="checkbox"/> No (if yes, attach copy of U.S. Coast Guard Release From Documentation)			
Is the vessel currently a foreign-documented vessel?		<input type="checkbox"/> Yes <input type="checkbox"/> No			

3. BRANDS	
<input type="checkbox"/> Hull Damaged	<input type="checkbox"/> Other _____ Jurisdiction under whose law vessel was branded: _____

4. SECURED PARTY INFORMATION			
Secured Party's Name		e-mail address	
Secured Party's Mailing Address		City	State
Additional Secured Party's Name (use separate sheet to list additional secured parties)		e-mail address	
Additional Secured Party's Mailing Address		City	State
5. HULL IDENTIFICATION NUMBER VERIFICATION			
Inspection Location			
Recommended Action: Title should be <input type="checkbox"/> Issued <input type="checkbox"/> Corrected <input type="checkbox"/> Canceled <input type="checkbox"/> Not Issued			
Comments/Correction:			
Inspecting Officer (Print Name)		Inspecting Officer's Signature Date	
6. DEALER SALES TAX REPORT AND VESSEL TRADE-IN INFORMATION (IF APPLICABLE)			
Sales Tax Registration Number	Date of Sale	Dealer License Number	Dealer/Agent Signature
Year of Trade In	Make of Trade-in	Title Number of Trade-in (if known)	Hull Identification Number of Trade-in
7. SALES/EXCISE TAX EXEMPTION CERTIFICATE			
I hereby certify that transfer of the vessel described above to the applicant is exempt from sales/excise tax for the following reason:			
<input type="checkbox"/> Purchaser holds valid exemption certificate <input type="checkbox"/> Gift <input type="checkbox"/> Bequest or Inheritance <input type="checkbox"/> Vessel will be exclusively for rental <input type="checkbox"/> Divorce Decree <input type="checkbox"/> Transfer between married couple <input type="checkbox"/> Other (explain): _____			
8. TAXES & FEES			
[insert appropriate calculations]			
9. APPLICATION ATTESTMENT AND SIGNATURES			

I DECLARE, UNDER PENALTY OF PURJURY, THAT I HAVE PERSONALLY INSPECTED THE HULL IDENTIFICATION NUMBER AND THAT ALL FACTS STATED IN THIS APPLICATION ARE TRUE.

Signature of Applicant (Owner) _____

Date _____

STATE OF [STATE NAME]
[DEPARTMENT]
[ADDRESS]

APPLICATION FOR CERTIFICATE OF TITLE

CHECK APPLICATION TYPE: ORIGINAL TRANSFER REPLACEMENT

1. OWNER/APPLICANT INFORMATION					
Do you want the certificate or title to be issued in electronic form? <input type="checkbox"/> Yes <input type="checkbox"/> No	Are you a [State] resident? Applicant/Owner: <input type="checkbox"/> Yes <input type="checkbox"/> No Co-Owner: <input type="checkbox"/> Yes <input type="checkbox"/> No	If jointly owned, may record title be transferred by owner of record alone? <input type="checkbox"/> Yes <input type="checkbox"/> No	State of Principal Use		
Applicant/Owner 1's Name		Date of Birth	e-mail address		Taxpayer ID #
Applicant/Owner 1's Mailing Address			City	State	Zip Code
Applicant/Owner 1's Principal Residence (if different from mailing address)			City	State	Zip Code
Owner 2's Name (use separate sheet to list additional owners)		Date of Birth	e-mail address		Taxpayer ID #
Owner 2's Mailing Address			City	State	Zip Code
2. VESSEL DESCRIPTION					
Hull Identification Number	Make/Manufacturer/Builder	Year	Vessel Number (if any)	State	Length (in feet)
Jurisdiction(s) in Which Vessel Was Previously Registered or Titled (use additional sheet if needed)				Registration or Title Number	
Vessel Type <input type="checkbox"/> Open motorboat <input type="checkbox"/> Houseboat <input type="checkbox"/> Personal watercraft <input type="checkbox"/> Cabin motorboat <input type="checkbox"/> Pontoon boat <input type="checkbox"/> Paddlecraft <input type="checkbox"/> Air boat <input type="checkbox"/> Auxiliary sail <input type="checkbox"/> Rowboat <input type="checkbox"/> Inflatable boat <input type="checkbox"/> Sail only <input type="checkbox"/> Other _____			Hull Material <input type="checkbox"/> Wood <input type="checkbox"/> Fiberglass <input type="checkbox"/> Plastic <input type="checkbox"/> Aluminum <input type="checkbox"/> Steel <input type="checkbox"/> Rubber/vinyl/canvas <input type="checkbox"/> Other _____		Engine Drive Type <input type="checkbox"/> Inboard <input type="checkbox"/> Outboard <input type="checkbox"/> Pod drive <input type="checkbox"/> Sterndrive <input type="checkbox"/> Other _____
Propulsion Type <input type="checkbox"/> Sail <input type="checkbox"/> Propeller <input type="checkbox"/> Air thrust <input type="checkbox"/> Water jet <input type="checkbox"/> Manual <input type="checkbox"/> Other _____		Fuel <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input type="checkbox"/> Diesel <input type="checkbox"/> Other _____		Use of Vessel <input type="checkbox"/> Pleasure <input type="checkbox"/> Rent or lease <input type="checkbox"/> Commercial fishing <input type="checkbox"/> Charter fishing <input type="checkbox"/> Commercial passenger carrying <input type="checkbox"/> Other commercial operation <input type="checkbox"/> Dealer or manufacturer demonstration	

Is vessel currently federally documented?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Was vessel previously federally documented?	<input type="checkbox"/> Yes	<input type="checkbox"/> No (if yes, attach copy of U.S. Coast Guard Release From Documentation)
Is the vessel currently a foreign-documented vessel?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. BRANDS		
<input type="checkbox"/> Hull Damaged	<input type="checkbox"/> Other _____	Jursidiction under whose law vessel was branded: _____

4. SECURED PARTY INFORMATION			
Secured Party's Name		e-mail address	
Secured Party's Mailing Address		City	State
Additional Secured Party's Name (use separate sheet to list additional secured parties)		e-mail address	
Additional Secured Party's Mailing Address		City	State
5. HULL IDENTIFICATION NUMBER VERIFICATION			
Inspection Location			
Recommended Action: Title should be <input type="checkbox"/> Issued <input type="checkbox"/> Corrected <input type="checkbox"/> Canceled <input type="checkbox"/> Not Issued			
Comments/Correction:			
Inspecting Officer (Print Name)		Inspecting Officer's Signature Date	
6. DEALER SALES TAX REPORT AND VESSEL TRADE-IN INFORMATION (IF APPLICABLE)			
Sales Tax Registration Number	Date of Sale	Dealer License Number	Dealer/Agent Signature
Year of Trade In	Make of Trade-in	Title Number of Trade-in (if known)	Hull Identification Number of Trade-in
7. SALES/EXCISE TAX EXEMPTION CERTIFICATE			
I hereby certify that transfer of the vessel described above to the applicant is exempt from sales/excise tax for the following reason:			
<input type="checkbox"/> Purchaser holds valid exemption certificate <input type="checkbox"/> Gift <input type="checkbox"/> Bequest or Inheritance <input type="checkbox"/> Vessel will be exclusively for rental <input type="checkbox"/> Divorce Decree <input type="checkbox"/> Transfer between married couple <input type="checkbox"/> Other (explain): _____			
8. TAXES & FEES			
[insert appropriate calculations]			
9. APPLICATION ATTESTMENT AND SIGNATURES			

I DECLARE, UNDER PENALTY OF PERJURY, THAT I HAVE PERSONALLY INSPECTED THE HULL IDENTIFICATION NUMBER AND THAT ALL FACTS STATED IN THIS APPLICATION ARE TRUE.

Signature of Applicant (Owner)

Date

SECTION 8. CREATION AND CANCELLATION OF CERTIFICATE OF TITLE.

(a) Unless an application for a certificate of title is rejected under subsection (c) or (d), the office shall create a certificate for the vessel in accordance with subsection (b) not later than 20 days after delivery to it of an application that complies with Section 7.

(b) If the office creates electronic certificates of title, the office shall create an electronic certificate unless in the application the secured party of record or, if none, the owner of record, requests that the office create a written certificate.

(c) Except as otherwise provided in subsection (d), the office may reject an application for a certificate of title only if:

(1) the application does not comply with Section 7;

(2) the application does not contain documentation sufficient for the office to determine whether the applicant is entitled to a certificate;

(3) there is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate would facilitate a fraudulent or illegal act; or

(4) the application does not comply with the law of this state other than this [act].

(d) The office shall reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

(e) The office may cancel a certificate of title created by it only if the office:

(1) could have rejected the application for the certificate under subsection (c);

(2) is required to cancel the certificate under another provision of this [act]; or

(3) receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

[(f) The office shall provide an opportunity for a hearing at which the owner and any other interested party may present evidence in support of or opposition to cancellation of a certificate of title. The office shall serve all owners and secured parties indicated in the files of the office with notice of the opportunity for a hearing. Service must be made personally or by mail through the United States Postal Service, properly addressed, postage paid, return receipt requested. Service by mail is complete on deposit with the United States Postal Service. The office by rule may authorize service by electronic transmission if a copy is sent on the same day by first-class mail or by a commercial delivery company. If not later than 30 days after the notice was served, the office receives a request for a hearing from an interested party, the office shall hold the hearing not later than 20 days after receiving the request.]

Legislative Note: *Subsection (f) is optional. It provides a procedure for the office to follow before canceling a certificate of title. It is intended for those states whose public records or other law does not already provide a procedure that ensures all interested parties are notified in advance and given an opportunity to be heard.*

Comment

1. Paragraph (c)(3) permits the office to reject an application if there is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate of title would facilitate a fraudulent or illegal act. Such a basis may exist if, for example, the ownership disclosed and documented in the application is contradicted by information obtained by the office through use of the Vessel Identification System.

2. Cancellation of a certificate of title does not, by itself, change the law governing the certificate or render unperfected a security interest perfected pursuant to this act. *See* Section 5 comment 4; Section 15 comment 3.

3. Some states have laws that require the applicable office to cancel a motor vehicle certificate of title for the owner's failure to pay child support, failure to pay parking tickets, or failure to maintain the vehicle in a mechanically fit manner. This Section does not permit cancellation for any of these reasons. Canceling the vessel's registration (*i.e.* license to use) for such failures would seem far more appropriate than canceling its certificate of title.

SECTION 9. CONTENT OF CERTIFICATE OF TITLE.

(a) A certificate of title must contain:

- (1) the date the certificate was created;
- (2) the name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the files of the office;
- (3) the mailing address of the owner of record;
- (4) the hull identification number;
- (5) the information listed in Section 7(b)(6);
- (6) except as otherwise provided in Section 15(b), the name and mailing address of the secured party of record, if any, and if not all secured parties are listed, an indication that there are other security interests indicated in the files of the office; and
- (7) all title brands indicated in the files of the office covering the vessel, including brands indicated on a certificate created by a governmental agency of another jurisdiction and delivered to the office.

(b) This [act] does not preclude the office from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

(c) For each title brand indicated on a certificate of title, the certificate must identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: “Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand).”.

(d) If the files of the office indicate that a vessel previously was registered or titled in a foreign country, the office shall indicate on the certificate of title that the vessel was registered or titled in that country.

(e) A written certificate of title must contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form must include a certification, signed under penalty of perjury, that the statements made are true and correct to the best of each owner's knowledge, information, and belief.

(f) A written certificate of title must contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the vessel is hull damaged.

Legislative Note: *Enacting states will need to ensure that the perjury laws of the state include unsworn statements.*

Comment

A sample form certificate of title follows. It includes a place for all the required information and illustrates how a state may choose to arrange that information.

STATE OF [STATE NAME]
[DEPARTMENT]

CERTIFICATE OF TITLE FOR A VESSEL

Owner of Record (name and mailing address)

Additional Owner(s) (names)

There are additional owners indicated in the files of [Department]

If jointly owned, may record title be transferred by owner of record alone? Yes No

Title #	Date of Issue	Title Brand(s)	Branding State(s)	Jurisdiction(s) of Previous Title or Registration
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Hull Identification #	Model Year/Year of Manufacture	Manufacturer/Builder	Model	ft. in. Length
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Vessel Type	Hull Material	Propulsion Type	Engine Drive Type	Fuel Type
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Secured Party of Record (name and mailing address)

Security Interest Released: _____
date

By: _____
authorized representative

There are additional secured parties indicated in the files of [Department]

TRANSFER OF OWNERSHIP			
New Owner 1's Name			
New Owner 1's Mailing Address	City	State	Zip Code
New Owner 2's Name (use separate sheet to list additional new owners)			
New Owner 2's Mailing Address	City	State	Zip Code
<p>Each of the undersigned declare, under penalty of perjury, that the information above is true and correct to the best of each signer's knowledge, information, and belief.</p> <div style="text-align: center; margin-bottom: 20px;"> _____ Owner of Record </div> <div style="text-align: center; margin-bottom: 20px;"> _____ Date </div> <div style="text-align: center; margin-bottom: 20px;"> _____ Additional Owner (listed on front) </div> <div style="text-align: center; margin-bottom: 20px;"> _____ Date </div> <div style="text-align: center; margin-bottom: 20px;"> _____ Additional Owner (listed on front) </div> <div style="text-align: center;"> _____ Date </div>			

SECTION 10. TITLE BRAND.

(a) Unless subsection (c) applies, at or before the time the owner of record transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, if the damage occurred while that person was an owner of the vessel and the person has notice of the damage at the time of the transfer, the owner shall:

(1) deliver to the office an application for a new certificate that complies with Section 7 and includes the title brand designation “Hull Damaged”; or

(2) indicate on the certificate in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.

(b) Not later than 20 days after delivery to the office of the application under subsection (a)(1) or the certificate of title under subsection (a)(2), the office shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(c) Before an insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, the insurer shall deliver to the office an application for a new certificate that complies with Section 6 and includes the title brand designation “Hull Damaged”. Not later than 20 days after delivery of the application to the office, the office shall create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(d) An owner of record that fails to comply with subsection (a), a person that solicits or colludes in a failure by an owner of record to comply with subsection (a), or an insurer that fails to comply with subsection (c) is subject to [an administrative] [a civil] penalty of \$[1,000].

Comment

1. Subsection (a) imposes only on the owner of record a duty to brand the title of a hull-damaged vessel. Other owners do not have such a duty. Subsection (a) is therefore unlikely to

apply to a dealer because a dealer typically will not have title transferred into the dealer's name for the relatively short period that the dealer owns the vessel. *Cf.* Section 6(b)(5) (exempting dealers from having to apply for a certificate of title). Subsection (a) is also unlikely to apply to a secured party. In contrast, subsection (d) applies to any person that "solicits or colludes in a failure to comply with subsection (a)," and thus might conceivably apply to dealer or secured party acting in collusion with the owner of record to avoid compliance with subsection (a).

2. Subsection (c) places the branding obligation on an insurer when the insurer is transferring an ownership interest in a hull-damaged vessel. The insurer need not be the owner of record for subsection (c) to apply. Moreover, it does not matter whether the ownership interest being transferred belongs to the insurer or the insured. Subsection (c) therefore applies when the insurer pays off on the insurance claim and takes ownership of the vessel for salvage purposes and also applies when the insurer facilitates a sale of the damaged vessel for the insured. However subsection (c) applies only to insurers acting in their capacity as insurers. It does not apply to an insurance company that acquires a vessel for unrelated business purposes only to later discover that the vessel is hull damaged.

3. An application for a new, branded certificate of title under subsection (a) or (c) must comply with Section 7. This in turn requires, among other things, that the existing, unbranded certificate be delivered to the office. *See* Section 7(d).

4. Following creation of a certificate of title under subsection (b) or (c), the office must deliver the new certificate pursuant to Section 12(a).

SECTION 11. MAINTENANCE OF AND ACCESS TO FILES.

(a) For each record relating to a certificate of title submitted to the office, the office shall:

- (1) ascertain or assign the hull identification number for the vessel;
- (2) maintain the hull identification number and all the information submitted with the application pursuant to Section 7(b) to which the record relates, including the date and time the record was delivered to the office;
- (3) maintain the files for public inspection subject to subsection (e); and
- (4) index the files of the office as required by subsection (b).

(b) The office shall maintain in its files the information contained in all certificates of title created under this [act]. The information in the files of the office must be searchable by the

hull identification number of the vessel, the vessel number, the name of the owner of record, and any other method used by the office.

(c) The office shall maintain in its files, for each vessel for which it has created a certificate of title, all title brands known to the office, the name of each secured party known to the office, the name of each person known to the office to be claiming an ownership interest, and all stolen-property reports the office has received.

(d) Upon request, for safety, security, or law-enforcement purposes, the office shall provide to federal, state, or local government the information in its files relating to any vessel for which the office has issued a certificate of title.

(e) Except as otherwise provided by the law of this state other than this [act], the information required under Section 9 is a public record. The information provided under Section 7(b)(3) is not a public record.

Comment

Subsection (e) makes the information on the certificate of title a public record. It does not make the information in the application a public record. Therefore, nothing in this act requires that the social security or taxpayer identification number of the owner or owners, which under Section 7(b)(3) must be included in the application, be made public.

The duties imposed by this Section are in addition to those imposed by Section 7(e).

SECTION 12. ACTION REQUIRED ON CREATION OF CERTIFICATE OF TITLE.

(a) On creation of a written certificate of title, the office promptly shall send the certificate to the secured party of record or, if none, to the owner of record, at the address indicated for that person in the files of the office. On creation of an electronic certificate of title, the office promptly shall send a record evidencing the certificate to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in the files of

the office. The office may send the record to the person's mailing address or, if indicated in the files of the office, an electronic address.

(b) If the office creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate. The office shall maintain in the files of the office the date and time of cancellation.

(c) Before the office creates an electronic certificate of title, any written certificate for the vessel must be surrendered to the office. If the office creates an electronic certificate, the office shall destroy or otherwise cancel the written certificate for the vessel which has been surrendered to the office and maintain in the files of the office the date and time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the office shall indicate on the face of the certificate that it has been canceled.

SECTION 13. EFFECT OF CERTIFICATE OF TITLE. A certificate of title is prima facie evidence of the accuracy of the information in the record that constitutes the certificate.

Comment

Source: Uniform Motor Vehicle Certificate of Title and Anti-Theft Act Section 9(d).

This section does not make a certificate of title conclusive evidence of the ownership of a vessel. Instead, this section makes a certificate of title merely prima facie evidence of ownership. In litigation concerning the ownership of a vessel, a certificate of title admitted into evidence is sufficient to prove ownership of a vessel unless someone comes forward with admissible evidence to the contrary. A certificate of title shifts both the burden of production and the burden of persuasion to anyone challenging the information on a written certificate or the information constituting an electronic certificate of title.

**SECTION 14. EFFECT OF POSSESSION OF CERTIFICATE OF TITLE;
JUDICIAL PROCESS.** Possession of a certificate of title does not by itself provide a right to obtain possession of a vessel. Garnishment, attachment, levy, replevin, or other judicial process

against the certificate is not effective to determine possessory rights to the vessel. This [act] does not prohibit enforcement under law of this state other than this [act] of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel. Absence of an indication of a statutory or common-law lien on a certificate does not invalidate the lien.

SECTION 15. PERFECTION OF SECURITY INTEREST.

(a) Except as otherwise provided in this section or Section 28, a security interest in a vessel may be perfected only by delivery to the office of an application for a certificate of title that identifies the secured party and otherwise complies with Section 7. The security interest is perfected on the later of delivery to the office of the application and the applicable fee or attachment of the security interest under [UCC Section 9-203].

(b) If the interest of a person named as owner, lessor, consignee, or bailor in an application for a certificate of title delivered to the office is a security interest, the application sufficiently identifies the person as a secured party. Identification on the application for a certificate of a person as owner, lessor, consignee, or bailor is not by itself a factor in determining whether the person's interest is a security interest.

(c) If the office has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to the office of an application, on a form the office may require, to have the security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include:

- (1) the name of the owner of record;
- (2) the name and mailing address of the secured party;
- (3) the hull identification number for the vessel; and
- (4) if the office has created a written certificate of title for the vessel, the

certificate.

(d) A security interest perfected under subsection (c) is perfected on the later of delivery to the office of the application and all applicable fees or attachment of the security interest under [UCC Section 9-203].

(e) On delivery of an application that complies with subsection (c) and payment of all applicable fees, the office shall create a new certificate of title pursuant to Section 8 and deliver the new certificate or a record evidencing an electronic certificate pursuant to Section 12(a). The office shall maintain in the files of the office the date and time of delivery of the application to the office.

(f) If a secured party assigns a perfected security interest in a vessel, the receipt by the office of a statement providing the name of the assignee as secured party is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. A purchaser of a vessel subject to a security interest which obtains a release from the secured party indicated in the files of the office or on the certificate takes free of the security interest and of the rights of a transferee unless the transfer is indicated in the files of the office or on the certificate.

(g) This section does not apply to a security interest:

(1) created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;

(2) in a barge for which no application for a certificate of title has been delivered to the office; or

(3) in a vessel before delivery if the vessel is under construction, or completed,

pursuant to contract and for which no application for a certificate has been delivered to the office.

(h) This subsection applies if a certificate of documentation for a documented vessel is deleted or canceled. If a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with 46 U.S.C. Section 31321, the security interest is and remains perfected until the earlier of four months after cancellation of the certificate or the time the security interest becomes perfected under this [act].

(i) A security interest in a vessel arising under [UCC Section 2-401, 2-505, 2-711(3), or 2A-508(5)] is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel, unless before the debtor obtains possession the security interest is perfected pursuant to subsection (a) or (c).

(j) A security interest in a vessel as proceeds of other collateral is perfected to the extent provided in [UCC Section 9-315].

(k) A security interest in a vessel perfected under the law of another jurisdiction is perfected to the extent provided in [UCC Section 9-316(d)].

Comment

Source: UCOTA Section 26; UCC Sections 9-311(b), 9-505(a).

1. Section 6(b)(3) provides that no application for a certificate of title is required for barges or for vessels under construction. Paragraphs (g)(2) and (3) of this section are corollaries to Section 6(b). They provide that a security interest in such a vessel is to be perfected under other law if no application for a certificate of title for the vessel has been delivered to the office. However, if an owner does apply for a certificate of title for the vessel, perfection must be through compliance with this section.

2. Subsection (d) provides that a security interest in a vessel is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee. This rule operates in conjunction with UCC Section 9-311(b), which provides that compliance with this act is the equivalent of filing a financing statement. Collectively, they allow for a security interest to attain priority under such rules as Section

9-317(a)(2)(B) (giving priority over a lien creditor whose lien arises after the security agreement is authenticated and a financing statement is filed), Section 9-317(e) (giving a perfected purchase-money security interest priority over a judicial lien if a financing statement is filed within 20 days of when the debtor receives possession), and Section 9-324(a) (giving a perfected purchase-money security interest priority over a conflicting security interest if a financing statement is filed to perfect the purchase-money security interest within 20 days of when the debtor received possession).

3. Because a security interest in a vessel covered by a certificate of title issued by the office is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, cancellation of the certificate does not affect perfection under this act.

4. Because subsection (a) requires delivery of an application that complies with Section 7, an application that fails to so comply, and which the office rightfully rejects pursuant to Section 8(c) or (d), will not be effective to perfect. *See* UCC Section 9-516 & cmt. 3.

5. Subsection (h) provides a temporary period of automatic perfection for a security interest in a vessel coming out of federal documentation. The purpose of this subsection is to facilitate the decision by the owner of and creditors with a security interest in a vessel to surrender the certificate of documentation and apply for a certificate of title. Without at least a temporary period of perfection, secured parties might risk being unperfected for the interval between surrender of the certificate of documentation and delivery to the titling office of an application for a certificate of title. It may be that 46 C.F.R. § 67.161 already provides for perfection of a security interest in a documented vessel to continue – indefinitely – upon surrender of the document pursuant to 46 C.F.R. § 67.171(a)(4). If so, subsection (h) would be unnecessary. However, it remains unclear whether federal law truly does provide for continuous and indefinite perfection of what, in that situation, would be a secret lien. In the event it does not, subsection (h) provides a temporary period of perfection.

Subsection (h) provides a temporary period of automatic perfection for a security interest in a vessel coming out of federal documentation only if this state's law governs perfection of the security interest. *See* UCC Section 9-301.

6. Subsection (j) permits a security interest in a vessel to be perfected pursuant to UCC Section 9-315. Under UCC Section 9-315(a)(2), a security interest attaches to a vessel that is identifiable proceeds of other collateral. Pursuant to subsections (c) and (d) of UCC Section 9-315, if the security interest in the original collateral was perfected, the security interest in the vessel will also be perfected. However, in most cases, such perfection will lapse after 20 days unless before then the security interest is perfected pursuant Section 15(a) of this act. That is because, unless Section 15(g) applies, a security interest in a vessel cannot be perfected by filing a financing statement. *Cf.* UCC Section 9-315(d).

7. Nothing in this act deals with whether a security interest in a vessel also attaches to fishing licenses or other rights or property appurtenant to the vessel. Similarly, nothing in this act deals with perfection of a security interest in fishing licenses or other rights or property

appurtenant to a vessel. *See* Section 2 comment 9.

SECTION 16. TERMINATION STATEMENT.

(a) A secured party indicated in the files of the office as having a security interest in a vessel shall deliver a termination statement to the office and, on the debtor's request, to the debtor, by the earlier of:

(1) 20 days after the secured party receives a signed demand from an owner for a termination statement and there is no obligation secured by the vessel subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or

(2) if the vessel is consumer goods, 30 days after there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel.

(b) If a written certificate of title has been created and delivered to a secured party and a termination statement is required under subsection (a), the secured party, not later than the date required by subsection (a), shall deliver the certificate to the debtor or to the office with the statement. If the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the secured party shall deliver with the statement, not later than the date required by subsection (a), an application for a replacement certificate meeting the requirements of Section 22.

(c) On delivery to the office of a termination statement authorized by the secured party, the security interest to which the statement relates ceases to be perfected. If the security interest to which the statement relates was indicated on the certificate of title, the office shall create a new certificate and deliver the new certificate or a record evidencing an electronic certificate.

The office shall maintain in its files the date and time of delivery to the office of the statement.

(d) A secured party that fails to comply with this section is liable for any loss that the secured party had reason to know might result from its failure to comply and which could not reasonably have been prevented and for the cost of an application for a certificate of title under Section 7 or 22.

Comment

Source: UCOTA Section 27; UCC Sections 2-715(2), 9-513.

Subsection (c) requires the office, upon delivery of a termination statement, to create a new certificate of title if the security interest to which the termination statement applies was indicated on the existing certificate of title. This will be the situation whenever the secured party was the secured party of record. It will also be the case if the security interest was otherwise listed on the certificate of title or the certificate indicated the existence of other unlisted security interests and the termination statement relates to the only unlisted security interest. *See* Section 9(a)(6). In creating a new certificate of title, the office shall comply with section 8(a) with respect to timing and with Section 8(b) in determining whether to create a written certificate of title or an electronic certificate of title.

If a termination statement delivered to the office relates to the security interest of the secured party of record, and one or more other security interests in the vessel are indicated in the files of the office, there will now be a new secured party of record. The new secured party of record will be the secured party whose security interest was first communicated to the office and for which no termination statement has been filed.

The limitation on damages in subsection (d) to those of which the secured party had reason to know is derived from UCC Section 2-715(2), and is a principle long applicable to claims arising in contract. *See Hadley v. Baxendale*, 156 Eng. Rep. 145 (Ex. Ct. 1854). However, it is a limitation not expressed in Article 9, *see* U.C.C. § 9-625, perhaps because a secured party's failure to comply with Article 9 duties is regarded as something closer to a tort than to a breach of contract. *Cf.* U.C.C. § 9-625 cmt. 3 (indicating that principles of tort law would supplement the claim with respect to a secured party's breach of the peace during repossession). Indeed, a secured party's failure to comply with this Section would give rise to a claim very like one for slander of title, a tort. Of course, tort remedies are also subject to various limitations, including the requirement of proximate cause and the economic loss doctrine (the latter of which may not be applicable to defamation actions). However, the limitation expressed in subsection (d) is not consistent with the traditional tort limits.

SECTION 17. TRANSFER OF OWNERSHIP.

(a) On voluntary transfer of an ownership interest in a vessel covered by a certificate of

title, the following rules apply:

(1) If the certificate is a written certificate of title and the transferor's interest is noted on the certificate, the transferor promptly shall sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor's compliance with this paragraph. A secured party does not have a duty to facilitate the transferor's compliance with this paragraph if the proposed transfer is prohibited by the security agreement.

(2) If the certificate of title is an electronic certificate of title, the transferor promptly shall sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee.

(3) The transferee has a right enforceable by specific performance to require the transferor comply with paragraph (1) or (2).

(b) The creation of a certificate of title identifying the transferee as owner of record satisfies subsection (a).

(c) A failure to comply with subsection (a) or to apply for a new certificate of title does not render a transfer of ownership of a vessel ineffective between the parties. Except as otherwise provided in Section 18, 19, 23(a), or 24, a transfer of ownership without compliance with subsection (a) is not effective against another person claiming an interest in the vessel.

(d) A transferor that complies with subsection (a) is not liable as owner of the vessel for an event occurring after the transfer, regardless of whether the transferee applies for a new certificate of title.

Comment

Source: UCOTA Section 16.

1. Subsections (a), (b), and (c) are intended to provide a simple baseline rule for transfers of ownership of a vessel covered by a certificate of title.

Subsection (a) requires the transferor to facilitate the creation of a new certificate of title by either signing and delivering the existing written certificate of title or authenticating and delivering a record evidencing the transfer of ownership with respect to a vessel covered by an electronic certificate of title. By referring to a “transfer of ownership,” subsection (a) applies to gifts as well as sales. It also covers a transfer of ownership by fewer than all of the owners, such as when only one of several joint owners sells or gifts its interest. Subsection (a) does not apply to the creation of a lease or security interest because neither of those transactions involves a “transfer of ownership.”

If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor’s compliance with subsection (a). However, if the person in possession is a secured party, this duty may be limited by the terms of the security agreement. For example, a secured party could refuse to surrender the certificate pending payment of the secured obligation, if the security agreement so provides.

2. Subsection (a) requires the signature on the certificate of title of only the owner whose ownership interest is being transferred. A state that wishes to require the signature of all owners indicated in the files of the office may do so by regulation.

3. This act is supplemented by otherwise applicable law, for example the law of agency. *See* Section 4. Therefore the obligations and rights recognized in this section can be exercised by authorized representatives of the transferor and transferee.

4. Subsection (c) makes clear that a transfer of ownership is effective between the parties thereto even if the transferor does not fulfill its duty to facilitate the creation of a new certificate of title identifying the transferee as an owner and even if no application for a new certificate of title is delivered to the office. This is consistent with the fact that a certificate of title is *prima facie* evidence, but not conclusive evidence, of ownership. *See* Section 13. A transfer effective between the parties would also be effective between and binding on their successors.

Subsection (c) also clarifies that a transfer of ownership of a vessel, even though effective between the parties, may not be effective against third parties claiming an interest in the vessel if the certificate of title continues to identify the transferor as owner. *See* Sections 23 or 24, *e.g.*, with respect to the rights of a good faith purchaser for value or a buyer in ordinary course of business.

5. Subsection (d) deals with any rule of law that assesses damages or imposes a fee or penalty on an owner of a vessel solely because of the person’s ownership interest. Thus, for example, if applicable law makes the owner of a vessel liable for property taxes, environmental contamination caused by the vessel, or for damages caused when the vessel escapes its mooring, an owner who complies with subsection (a) will not be liable for any such taxes assessed, contamination occurring, or damages caused after that compliance.

SECTION 18. EFFECT OF MISSING OR INCORRECT INFORMATION.

Except as otherwise provided in [UCC Section 9-337], a certificate of title or other record required or authorized by this [act] is effective even if it contains incorrect information or does not contain required information.

Comment

Sources: UCOTA Section 20, UCC Sections 9-338, 9-506.

1. This section states the general rule that a certificate of title remains effective even if it contains errors or omissions. As a result, the certificate remains prima facie evidence of the information in record that constitutes the certificate of title. *See* Section 13.

Example 1: The office creates a certificate of title that transposes two of the digits in the hull identification number for the vessel. The certificate remains effective regardless whether the applicant or the office made the error and regardless whether the files of the office contain the same error.

Example 2: The office creates a certificate of title that misspells the name of the owner of record. The certificate remains effective regardless whether the applicant or the office made the error and regardless whether the files of the office contain the same error.

2. Because this section applies not only to a certificate of title, but also to any “other record required or authorized by this act,” the section applies to an application for a certificate of title. This rule must be read in conjunction with Section 15(d), which provides that a security interest in a vessel is perfected upon delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, and UCC Section 9-311(b), which provides that compliance with this act is the equivalent of filing a financing statement. Thus, delivery to the office of an application for a certificate of title that identifies a security interest, together with payment of the applicable fee, even if the application contains an error or omission, constitutes compliance with this act and is the equivalent of filing a financing statement.

Collectively, these rules ensure that a security interest noted in an application for a certificate of title delivered to the office pursuant to Section 7 or 15 is perfected despite any error in the *certificate*. To determine whether the security interest is perfected if the *application* has an error or omission, one must refer to the rules of Article 9 regarding the efficacy of financing statements. *See* UCC Sections 9-506, 9-516, 9-520.

For example, a filed financing statement is effective to perfect even if it contains a minor error that is not seriously misleading. *See* UCC Section 9-506. For this purpose, a failure to describe some collateral would be seriously misleading as to omitted collateral. An error in the debtor’s name on a financing statement could also be seriously misleading because searches are

based on the debtor's name and an error in that name may cause the filed financing statement not to be disclosed. However, an error in the secured party's name or address cannot be seriously misleading. Section 9-506 cmt. 2.

The same rule applies under this act. Thus, an error in the secured party's name or address imposes no burden on someone seeking to identify who has an ownership interest or security in a titled vessel. As a result, such an error does not render the security interest unperfected. *See In re Farley*, 387 B.R. 751 (Bankr. S.D. Ohio 2008) (using abbreviated name for secured parties on certificates of title was not seriously misleading and did not render security interests unperfected).

Example 3: Secured Party's name is misspelled in the application for a certificate of title delivered to the office. As a result, Secured Party's name is also misspelled on the certificate of title. The security interest is perfected.

However, application of the seriously misleading standard in UCC Section 9-506 to applications for a certificate of title must take into account the different manner in which searches for perfected security interests are conducted. In particular, whereas searches for financing statements are based on the debtor's name, searches relating to vessels covered by a certificate of title are ordinarily based on the hull identification number. *See* Section 25(d). Accordingly, whereas an error in a debtor's name on a filed financing statement may prevent the financing statement from being disclosed in response to a proper search request, an error in the name of the owner of record is unlikely to prevent a searcher from discovering the existence of a perfected security interest in a vessel covered by a certificate of title. *See In re Laursen*, 391 B.R. 47 (Bankr. D. Id. 2008) (typographical error in debtor's first name on certificate of title for vehicle did not render security interest unperfected because certificates of title are indexed by vehicle identification number, not by name).

Example 4: Owner's name is misspelled in the application for a certificate of title delivered to the office. As a result, Owner's name is also misspelled on the certificate of title. The application identifies Bank as a secured party. The security interest is perfected.

Even an error in the description of the vessel will not render a security interest unperfected. Although search requests can be processed using the hull identification number, *see* Section 25(d), an error in the hull identification number on the certificate of title cannot really deceive the searcher. If the error existed solely on a written certificate of title but not in the files of the office, a search under the correct number would yield all the relevant information. If the error existed both on the certificate of title and in the files of the office, then a search using the correct hull identification number would yield nothing. Anyone seeking to acquire an interest in such a seemingly untitled vessel after such search should conduct further investigation.

The same method of analysis applies to applications that the office rejects. If rejection was authorized under Section 7, then a security interest noted in the application will not be perfected by delivery of the application to the office. *See* UCC Section 9-516(b). If, however, rejection was not authorized under Section 7, then delivery of the application, together with payment of the applicable fee, will perfect a security interest identified in the application. *See*

UCC Section 9-516(a), (c). The priority of that security interest may, however, be affected by the office's rejection of the application. *See* Section 24(a); UCC Section 9-516(c). Similarly, errors in the application might affect the priority of a security interest. *See* UCC Sections 9-338, 9-520(c).

3. This section makes UCC Section 9-337 applicable to certificates of title created under this act. Thus, if the office creates a certificate of title that fails to indicate a security interest that was identified in the application for the certificate, a buyer or secured party who relies on the clean certificate may take free or obtain priority.

Example 5: Lender's security interest is identified in the application for a certificate of title delivered to the office. The office creates a certificate of title that fails to indicate Lender's security interest. Lender's security interest is perfected. *See* Section 15. However, a buyer, other than buyer in the business of selling goods of that kind, who gives value and receives delivery of the vessel without knowledge of Lender's security interest takes free of the security interest. Similarly, a security interest perfected after creation of the certificate of title and without knowledge of Lender's security interest has priority over Lender's security interest.

Example 6: Owner delivers to the office an application for a certificate of title for a vessel. The application identifies Lender as a secured party but misstates the hull identification number for the vessel. Lender's security interest is perfected. Owner later offers to sell the vessel to Buyer. Buyer requests a search using the vessel's correct hull identification number. The office responds that it has no record relating to that hull identification number. Buyer insists, as a condition to the transaction, that Owner get a certificate of title for the vessel. Owner delivers to the office a new application for a certificate of title. The new application does not disclose Lender's security interest. Office issues a certificate of title for the vessel that does not indicate Lender's security interest. Lender's security interest remains perfected. However, Buyer may take free of Lender's security interest pursuant to UCC Section 9-337(1).

SECTION 19. TRANSFER OF OWNERSHIP BY SECURED PARTY'S

TRANSFER STATEMENT.

(a) In this section, "secured party's transfer statement" means a record signed by the secured party of record stating:

- (1) that there has been a default on an obligation secured by the vessel;
- (2) the secured party of record is exercising or has exercised post-default remedies with respect to the vessel;
- (3) by reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner, and the name of the owner;

(4) the name and last-known mailing address of the owner of record and the secured party of record;

(5) the name of the transferee;

(6) other information required by Section 7(b); and

(7) one of the following:

(A) the certificate of title is an electronic certificate;

(B) the secured party does not have possession of the written certificate of title created in the name of the owner of record; or

(C) the secured party is delivering the written certificate of title to the office with the secured party's transfer statement.

(b) Unless the office rejects a secured party's transfer statement for a reason stated in Section 8(c), not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under the law of this state other than this [act] in connection with the statement or the acquisition or use of the vessel, the office shall:

(1) accept the statement;

(2) amend the files of the office to reflect the transfer; and

(3) if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:

(A) cancel the certificate even if the certificate has not been delivered to the office;

(B) create a new certificate indicating the transferee as owner; and

(C) deliver the new certificate or a record evidencing an electronic certificate.

(c) An application under subsection (a) or the creation of a certificate of title under subsection (b) is not by itself a disposition of the vessel and does not by itself relieve the secured party of its duties under [UCC Article 9].

Comment

Source: UCOTA Section 21.

A secured party could be “the transferee” within the meaning of paragraph (a)(5) if the secured party either purchases the vessel at a disposition pursuant to UCC Section 9-610 or accepts the vessel in full or partial satisfaction of the debt pursuant to UCC Section 9-620.

SECTION 20. TRANSFER BY OPERATION OF LAW.

(a) In this section:

(1) “By operation of law” means pursuant to a law or judicial order affecting ownership of a vessel:

(A) because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;

(B) through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or

(C) through other legal process.

(2) “Transfer-by-law statement” means a record signed by a transferee stating that by operation of law the transferee has acquired or has the right to acquire an ownership interest in a vessel.

(b) A transfer-by-law statement must contain:

(1) the name and last known mailing address of the owner of record and the transferee and the other information required by Section 7(b);

(2) documentation sufficient to establish the transferee’s ownership interest or

right to acquire the ownership interest;

(3) a statement that:

(A) the certificate of title is an electronic certificate of title;

(B) the transferee does not have possession of the written certificate of title created in the name of the owner of record; or

(C) the transferee is delivering the written certificate to the office with the transfer-by-law statement; and

(4) except for a transfer described in subsection (a)(1)(A), evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in the files of the office as having an interest, including a security interest, in the vessel.

(c) Unless the office rejects a transfer-by-law statement for a reason stated in Section 8(c) or because the statement does not include documentation satisfactory to the office as to the transferee's ownership interest or right to acquire the ownership interest, not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under the law of this state other than this [act] in connection with the statement or with the acquisition or use of the vessel, the office shall:

(1) accept the statement;

(2) amend the files of the office to reflect the transfer; and

(3) if the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:

(A) cancel the certificate even if the certificate has not been delivered to the office;

(B) create a new certificate indicating the transferee as owner;

(C) indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and

(D) deliver the new certificate or a record evidencing an electronic certificate.

(d) This section does not apply to a transfer of an interest in a vessel by a secured party under [UCC Article 9, Part 6].

Comment

Source: UCOTA Section 22.

Subparagraph (a)(1)(C) covers all types of legal process, whether or not conducted pursuant to judicial order. It includes a sale following governmental seizure of a vessel and a sale under 46 U.S.C. Section 31326.

SECTION 21. APPLICATION FOR TRANSFER OF OWNERSHIP OR TERMINATION OF SECURITY INTEREST WITHOUT CERTIFICATE OF TITLE.

(a) Except as otherwise provided in Section 19 or 20, if the office receives, unaccompanied by a signed certificate of title, an application for a new certificate that includes an indication of a transfer of ownership or a termination statement, the office may create a new certificate under this section only if:

(1) all other requirements under Sections 7 and 8 are met;

(2) the applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement;

(3) the applicant provides the office with satisfactory evidence that notification of the application has been sent to the owner of record and all persons indicated in the files of the office as having an interest, including a security interest, in the vessel, at least 45 days have

passed since the notification was sent, and the office has not received an objection from any of those persons; and

(4) the applicant submits any other information required by the office as evidence of the applicant's ownership or right to terminate the security interest, and the office has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel.

(b) The office may indicate in a certificate of title created under subsection (a) that the certificate was created without submission of a signed certificate or termination statement. Unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel is delivered to the office not later than one year after creation of the certificate, on request in a form and manner required by the office, the office shall remove the indication from the certificate.

[(c) Unless the office determines that the value of a vessel is less than \$[5,000], before the office creates a certificate of title under subsection (a), the office may require the applicant to post a bond or provide an equivalent source of indemnity or security. The bond, indemnity, or other security may not exceed twice the value of the vessel as determined by the office. The bond, indemnity, or other security must be in a form required by the office and provide for indemnification of any owner, purchaser, or other claimant for any expense, loss, delay, or damage, including reasonable attorney's fees and costs, but not including incidental or consequential damages, resulting from creation or amendment of the certificate.]

[(d) Unless the office receives a claim for indemnity not later than one year after creation of a certificate of title under subsection (a), on request in a form and manner required by the office, the office shall release any bond, indemnity, or other security.]

SECTION 22. REPLACEMENT CERTIFICATE OF TITLE.

(a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if no secured party is indicated in the files of the office, the owner of record may apply for and, by furnishing information satisfactory to the office, obtain a replacement certificate in the name of the owner of record.

(b) An applicant for a replacement certificate of title must sign the application, and, except as otherwise permitted by the office, the application must comply with Section 7. The application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

(c) A replacement certificate of title created by the office must comply with Section 9 and indicate on the face of the certificate that it is a replacement certificate.

(d) If a person receiving a replacement certificate of title subsequently obtains possession of the original written certificate, the person promptly shall destroy the original certificate of title.

Comment

When creating a replacement certificate of title, the office must comply with subsection (c) regardless of whether it creates a written certificate of title or an electronic certificate of title. No matter the format, the replacement certificate of title must be designated on its face as a replacement.

SECTION 23. RIGHTS OF PURCHASER OTHER THAN SECURED PARTY.

(a) A buyer in ordinary course of business has the protections afforded by [UCC Sections 2-403(2) and 9-320(a)] even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

(b) Except as otherwise provided in Sections 17 and 24, the rights of a purchaser of a

vessel which is not a buyer in ordinary course of business or a lien creditor are governed by [the UCC].

Comment

1. Subsection (a) is a specific application of the general rule principle stated in subsection (b) and is designed to overrule the line of cases ruling that the buyer must obtain or apply for a new certificate of title identifying the buyer as the owner.

2. Subsection (b) incorporates the provisions of UCC Sections 2-403(1), 2A-304(1), and 2A-305(1) to protect good faith purchasers for value. “Value” is defined in UCC Section 1-204.

Example 1: Scoundrel buys a vessel from Owner and a new certificate of title is created identifying Scoundrel as owner of record. In connection with the transaction, Scoundrel deceived Owner as to Scoundrel’s identity, with the result that the transaction is voidable by Owner. *See* UCC Section 2-403(1). Before Owner takes any action, Scoundrel sells the vessel for value to Buyer, who applies for a new certificate of title. If Buyer purchased the vessel in good faith, Buyer acquires good title to the vessel. *See* UCC Section 2-403(1).

4. Compliance with this act is generally not relevant to an owner’s rights against a grantor or someone else up the chain of title; it is relevant only to the owner’s rights against someone down the chain of title (*e.g.*, someone else who subsequently acquired rights from the grantor).

However, in some circumstances, the failure of a purchaser to ensure that an application is delivered to the office for a certificate of title that indicates purchaser’s interest in the vessel may prevent the purchaser from qualifying as a good faith purchaser. “Good faith” is defined in Section 2(b)(11) to include observance of reasonable commercial standards of fair dealing. While it may be customary for a buyer in ordinary course of business – that is, a person buying from a dealer – to buy a vessel without seeing or obtaining the existing certificate of title, this is not customary for a purchase from a non-dealer. Thus a buyer who buys a vessel outside the ordinary course of business and without execution of the certificate of title may not be observing reasonable commercial standards of fair dealing and may not qualify as a good faith purchaser.

Example 2: Same facts as Example 1, except that through inadvertence no application is delivered to the office for a certificate of title indicating Buyer’s ownership of the vessel. Buyer’s failure to have a new certificate of title created means that Buyer may lose ownership of the vessel to a subsequent transferee from Scoundrel. *See* Section 17(c). However, Buyer’s failure to have a new certificate of title created does not suggest a lack of fair dealing toward Owner, and thus does not by itself prevent Buyer from qualifying as a good faith purchaser.

Example 3: Same facts as Example 2, except that Buyer suspects that Scoundrel may have engaged in deceitful behavior and chooses not to apply for a new certificate of title in an effort to make it more difficult for any prior owner to identify Buyer and Buyer’s interest in the vessel. Buyer does not qualify as a good faith purchaser and therefore does not obtain good title to

the vessel under UCC Section 2-403(1).

5. Subsection (a) applies the “entrustment” rule of UCC Section 2-403(2) to vessels, even if no application to have the buyer’s interest noted on the certificate of title is ever delivered with the office.

Example 4: Owner, whose interest in a vessel is indicated on the certificate of title, brings a vessel to Merchant for repair. Merchant is in the business of repairing and selling vessels of this type. Merchant sells the vessel to Buyer, who qualifies as a buyer in ordinary course of business. Buyer acquires Owner’s rights to the vessel. This result follows even though Merchant had no rights in the vessel, Merchant was not listed as owner on the certificate of title, and no application for a new certificate of title is delivered to the office.

Example 5: Same facts as Example 4, except that subsequently Owner purports to sell the vessel to Purchaser. In connection with that transaction, Owner signs the certificate of title and delivers it to Purchaser. Even though there was no compliance with Section 17(a) in connection with the earlier transfer of ownership to Buyer, Purchaser does not acquire rights to the vessel. See Section 17(c), which is made expressly subject to Section 23(a). The result would be the same if Owner purported to grant Purchaser a security interest in the vessel.

SECTION 24. RIGHTS OF SECURED PARTY.

(a) Subject to subsection (b), the effect of perfection and nonperfection of a security interest and the priority of a perfected or unperfected security interest with respect to the rights of a purchaser or creditor, including a lien creditor, is governed by [the UCC].

(b) If, while a security interest in a vessel is perfected by any method under this [act], the office creates a certificate of title that does not indicate that the vessel is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate:

(1) a buyer of the vessel, other than a person in the business of selling or leasing vessels of that kind, takes free of the security interest if the buyer, acting in good faith and without knowledge of the security interest, gives value and receives possession of the vessel; and

(2) the security interest is subordinate to a conflicting security interest in the vessel that is perfected under Section 15 after creation of the certificate and without the

conflicting secured party's knowledge of the security interest.

Comment

Because perfection of a security interest in a vessel held as inventory for sale or lease by a person engaged in the business of selling goods of that kind is not governed by this Act, *see* Section 15(g)(1), subsection (b) of this Section has no application to such a security interest. Therefore, if a security interest in a vessel is perfected by filing and the office creates a certificate of title that neither indicates the security interest nor notes that the vessel may be subject to security interests not so noted, a buyer of the vessel cannot take free of the security interest under this Section. If such a buyer qualifies as a buyer in ordinary course of business, the buyer will take free of the security interest under Section 23(a) and U.C.C. Section 9-320(a). If the buyer does not qualify as buyer in ordinary course of business, say perhaps because the buyer acquired the vessel in total or partial satisfaction of a preexisting money debt, the buyer will take subject to the perfected security interest. *See* U.C.C. Section 9-201(a).

SECTION 25. DUTIES AND OPERATION OF OFFICE.

(a) The office shall retain the evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title.

(b) The office shall retain in its files all information regarding a security interest in a vessel for at least 10 years after the office receives a termination statement regarding the security interest. The information must be accessible by the hull identification number for the vessel and any other methods provided by the office.

(c) If a person submits a record to the office, or submits information that is accepted by the office, and requests an acknowledgment of the filing or submission, the office shall send to the person an acknowledgment showing the hull identification number of the vessel to which the record or submission relates, the information in the filed record or submission, and the date and time the record was received or the submission accepted. A request under this section must contain the hull identification number and be delivered by means authorized by the office.

(d) The office shall send or otherwise make available in a record the following

information to any person that requests it and pays the applicable fee:

(1) whether the files of the office indicate, as of a date and time specified by the office, but not a date earlier than three days before the office received the request, any certificate of title, security interest, termination statement, or title brand that relates to a vessel:

(A) identified by a hull identification number designated in the request;

(B) identified by a vessel number designated in the request; or

(C) owned by a person designated in the request;

(2) with respect to the vessel:

(A) the name and address of any owner as indicated in the files of the office or on the certificate of title;

(B) the name and address of any secured party as indicated in the files of the office or on the certificate, and the effective date of the information; and

(C) a copy of any termination statement indicated in the files of the office and the effective date of the termination statement; and

(3) with respect to the vessel, a copy of any certificate of origin, secured party transfer statement, transfer-by-law statement under Section 20, and other evidence of previous or current transfers of ownership.

(e) In responding to a request under this section, the office may provide the requested information in any medium. On request, the office shall send the requested information in a record that is [self-authenticating] under [insert applicable rule of evidence].

Comment

Subsection (a) requires the office to maintain the evidence used to establish certain information but does not dictate how the office must maintain that evidence. Therefore the office may, if permissible under applicable law and its own rules and regulations, maintain the evidence in electronic or digitized form.

Except as provided in subsection (a) or (b), the office should retain information about previous owners of a vessel or information on a previous certificate of title for a vessel pursuant to the state's records retention law or the office's record retention policy.

An existing or new owner of a vessel covered by a certificate of title may wish to have the vessel become a documented vessel. To accomplish this, the owner will need a certified copy of the a certificate of origin or other documents previously submitted to the office with an application for a certificate of title. Subsection (e) facilitates this by requiring the office to provide those documents in a form that the owner needs. *Cf.* Section 7(e) (requiring the office to maintain either the original or the image of documents submitted with an application for a certificate of title).

SECTION 26. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 27. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 28. SAVINGS CLAUSE.

(a) The rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel which was validly entered into or created before [the effective date of this [act]] and would be subject to this [act] if it had been entered into or created on or after [the effective date of this [act]], remain valid on and after [the effective date of this [act]].

(b) This [act] does not affect an action or proceeding commenced before [the effective date of this [act]].

(c) Except as otherwise provided in subsection (d), a security interest that is enforceable

immediately before [the effective date of this [act]] and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this [act].

(d) A security interest perfected immediately before [the effective date of this [act]] remains perfected until the earlier of:

(1) the time perfection would have ceased under the law under which the security interest was perfected; or

(2) three years after [the effective date of this [act]].

(e) This [act] does not affect the priority of a security interest in a vessel if immediately before [the effective date of this [act]] the security interest is enforceable and perfected, and that priority is established.

Comment

Sources: ULC Drafting Rule 603; UCOTA Section 31; UCC Section 9-703.

1. Subsection (d) limits the duration of perfection for security interests perfected by possession or filing. The effect of subsections (c) and (d) is summarized by the following chart.

**Effect on Security Interest in Vessel
For Which State Enacting UCOTA-V Is the State of Principal Use**

		Effect on Security Interest of Enactment
Governing Law Was Law of State Enacting UCOTA-V	Had a COT law that applied	None. If perfected under old law, remains perfected. If unperfected under old law, remains unperfected. No change in priority.
	Had a COT law that did not apply	None immediately. If perfected under old law (presumably by filing or possession), remains perfected until earlier of three years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	
Governing Law Was Law of State Different from State Enacting UCOTA-V	Had a COT law that applied	None immediately. If perfected under other state’s COT law, remains perfected until perfection would have ceased. If unperfected under other state’s law, remains unperfected. No change in priority.
	Had a COT law that did not apply	None immediately. If perfected under other state’s law (presumably by filing or possession), remains perfected until earlier of three years after effective date or when perfection would have ceased. If unperfected under old law, remains unperfected. No change in priority.
	Did not have a COT law	

The analysis of perfection must begin with U.C.C. § 9-303. If a COT covering the collateral has been issued or applied for, the law of that jurisdiction governs. U.C.C. § 9-303(b), (c). The next step is to go to that jurisdiction’s U.C.C. § 9-311. That jurisdiction’s version U.C.C. of § 9-311(a)(2) will indicate that perfection is governed by the COT statute.

If no application has been filed or COT issued, then the law where the debtor is located governs (or the law where the collateral is located if a security interest is perfected by possession). The next step is to go to that jurisdiction’s U.C.C. § 9-311. If that jurisdiction has a COT statute that applies, then U.C.C. § 9-311(a)(2) will require compliance with that COT statute. If the vessel is subject to the certificate of title statute in another jurisdiction, then U.C.C. § 9-311(a)(3) will require compliance with that other jurisdiction’s COT statute. *Compare* U.C.C. § 9-311(a) (referring to property “subject to” a certificate-of-title statute) *with* U.C.C. § 9-303(a)-(c) (indicating that the governing law is the law of the jurisdiction issuing a certificate of title that “cover[s]” the goods).

Through this multi-step process, the choice-of-law rules in Article 9 always point to the law of the same jurisdiction.

Scenario 1: Perfected by filing in State A (where debtor is located). Now governed by UCOTA-V in State A. Under law of State A, the security interest remains perfected until the earlier of three years after effective date of State A's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State A. This is true even if, during that time, the owner applies for a certificate of title under this act and fails to list the security interest in the application. As a result, the secured party has, in general, three years to make sure that its interest is noted on the certificate of title in order to maintain perfection. Of course, if during this time, a certificate of title is issued that fails to identify the security interest, a purchaser may take priority over or take free of the security interest pursuant to U.C.C. § 9-337.

Scenario 2: Perfected by filing in State A (where debtor is located). Now governed by UCOTA-V in State B. Once an application for a COT is applied for in State B, State B's law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 28, the security interest remains perfected until the earlier of three years after effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State B. This is true even if the application for a certificate of title in State B and fails to list the security interest in the application. However, a purchaser may benefit from U.C.C. § 9-337.

If no application for a certificate of title is applied for in State B, then the law of State A continues to govern. State A's U.C.C. § 9-311(a)(3) will now look to State B. Because of the operation of Section 28 of State B's UCOTA-V, perfection will continue until the earlier of three years after the effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, whether due to an initial financing statement, a proper continuation statement, or possession, the secured party will have three years to have the security interest noted on a certificate of title issued by State B.

Scenario 3: Perfected by compliance with certificate of title statute in State A. Now governed by UCOTA-V in State B. Once an application for a COT is applied for in State B, State B's law governs perfection. U.C.C. § 9-303(b), (c). Because of the operation of Section 28, the security interest remains perfected until the earlier of three years after effective date of State B's UCOTA-V or when perfection would have ceased under the law of State A. As long as the secured interest remains perfected under the law of State A, the secured party will have three years to have the security interest noted on a certificate of title issued by State B. However, because State A's certificate of title statute will no longer govern, perfection will have lapsed under the law of State A, and thus the secured party has no grace period for perfection. If the security interest is noted on the application for the certificate of title filed in State B, which is likely if it was noted on the surrendered State A certificate, the security interest will be perfected

under Section 15. If the security interest is not noted on the application filed in or certificate issued by State B, the security interest will be unperfected.

If no application for a certificate of title is applied for in State B, then pursuant to U.C.C. § 9-303 the law of State A continues to govern. State A's U.C.C. § 9-311(a)(2) will continue to look to the certificate of title law of State A. Consequently, the security interest remains perfected as long as State A's certificate of title law continues to apply.

2. Pursuant to subsection (d), a secured party whose security interest is perfected by a filed financing statement will generally have three years to perfect pursuant to this act. Perfection under this act requires that the owner apply for a certificate of title and that the application note the security interest. *See* Sections 7 and 15. If the owner fails to make such an application, the secured party may face the prospect of becoming unperfected. However, a well-drafted security agreement will require the debtor to assist the secured party in perfecting the security interest or in maintaining perfection. Moreover, in the security agreement the debtor may have appointed the secured party to act as the debtor's agent or attorney in fact for this purpose. In such a case, the secured party would be authorized to apply for a certificate of title.

SECTION 29. REPEALS. The following acts and parts of acts are repealed:

[add legislative note]

SECTION 30. EFFECTIVE DATE. This [act] takes effect

Appendix H: Fiscal Estimates from TWRA and Department of Revenue for Boat Titling System



DRAFT SUPPORT FORM

* Denotes required field.

1. General Information

*Bill or Amendment Number(s): TACIR Titling Boats Bill 2

- Original Bill X
- Corrected Bill
- Amendment(s)
- Corrected Amendment(s)

*Drafting Code(s): No Drafting Code

*Department: Revenue

*Date: 11/7/17

*Preparer: Kirk Johnson

*Phone: 615-741-4600

*Preparer's E-mail (hit return to make hyperlink): kirk.johnson@tn.gov

2. *Explain specifically how this bill or amendment will impact your department or programs.

This bill is similar to Connecticut's law. Under Connecticut's law, all motorboats and all sailboats 19.5 feet in length or longer are required to be titled if they have a model year or construction date of 2017 or later; are registered in Connecticut where Connecticut is identified as the state of principal use; and are not documented with the United States Coast Guard or titled in another state. It is assumed that the Tennessee bill would have the similar requirements and that the model year or construction date would be 2020.

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) provided to the Department of Revenue the information below on boat registrations obtained from the Tennessee Wildlife Resources Agency (TWRA):

- Current Registrations as of December 31, 2016: 254,480
- New Registrations in 2016: 17,675
- Registrations Transferred in 2016: 26,675

It is not known how many of the new registrations are due to the purchase of new boats.

Under the bill, TWRA would continue to register boats.

Regarding the fiscal impact of this bill, this support form addresses only the state expenditures required by the Department of Revenue to implement and administer the bill.

3. State Fiscal Impacts (Boxes will expand as information is typed.)

Increase State Expenditures

Fiscal Year	One-Time	Recurring	Fund Affected
First Year	\$332,182	\$777,601	

*And subsequent years. Includes recurring costs from first year.

Decrease State Expenditures

Fiscal Year	One-Time	Recurring	Fund Affected

Increase State Revenue

Fiscal Year	One-Time	Recurring	Fund Affected

Decrease State Revenue

Fiscal Year	One-Time	Recurring	Fund Affected

If state revenue is forgone, denote amount, fiscal year(s) and explain why the department believes it is forgone as opposed to a decrease:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

4. Local Fiscal Impacts

Increase Local Expenditures

Fiscal Year	One-Time		Recurring	
	Mandatory	Permissive	Mandatory	Permissive

Decrease Local Expenditures

Fiscal Year	One-Time		Recurring	
	Mandatory	Permissive	Mandatory	Permissive

Increase Local Revenue

Fiscal Year	One-Time		Recurring	
	Mandatory	Permissive	Mandatory	Permissive

Decrease Local Revenue

Fiscal Year	One-Time		Recurring	
	Mandatory	Permissive	Mandatory	Permissive

Additional Explanation of local impact if desired:

If local revenue is forgone, denote amount, fiscal year(s) and explain why the department believes it is forgone as opposed to a decrease:

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5. Federal Fiscal Impacts

Increase Federal Expenditures

Fiscal Year	One-Time	Recurring	Fund Affected

Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

Decrease Federal Expenditures

Fiscal Year	One-Time	Recurring	Fund Affected

Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

Increase Federal Revenue

Fiscal Year	One-Time	Recurring	Fund Affected

Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

Decrease Federal Revenue

Fiscal Year	One-Time	Recurring	Fund Affected

Identify which federal programs these funds are attached to:

If the dollar amount or source of funding will change beyond the first two fiscal years, please state the change:

6. Other Fiscal Impacts (If the impact cannot be placed into the above fields, is not specifically quantifiable, is a cost avoidance, or if additional information is needed to explain the fiscal impact(s) use the space below):

7. *Assumptions Used to Determine Fiscal Impact/Breakdown of Impact: (Indicate number and type of positions; show personnel costs, benefits, supplies, equipment, travel, etc. Attach copies of worksheets, if needed. Include assumptions for zero impacts).

Below are the staffing needs of Vehicle Services:

First Year	Enter # of	Base Monthly	Annual	Annual	Position Total
Job Title	positions	Salary	Annual Salary	Benefits	
VS Manager	1	\$5,065	\$60,780	\$19,782	\$80,562
VS Supervisor	1	\$3,968	\$47,616	\$16,796	\$64,412
VSR 3	6	\$3,265	\$235,080	\$89,298	\$324,378
TOTAL	8		\$343,476	\$125,876	\$469,352

In addition, in the first year, there will be a one-time expenditure of \$30,400 and a recurring expenditure of \$50,400 for telecommunications, supplies, space, and training.

Business Information Systems provided the estimates below:

Project Start-Up Costs	\$50,000
Testing	\$25,000
Implementation	\$100,000
Total	\$175,000

In addition, there will be an annual fee of \$25,000 for maintenance and support.

STS estimates a one-time cost of \$126,782 and a recurring cost of \$232,849 for infrastructure, network, and support.

In summary, total one-time costs are \$332,182 (30,400 + 175,000 + 126,782) and total recurring costs are \$777,601 (469,352 + 50,400 + 25,000 + 232,849).

8. *Is funding for this legislation included in the Governor’s proposed budget?

- Yes No

Amount Included if different from estimated cost \$ _____

9. Explanation of Abbreviations Used:

10. Additional Comments by Preparer:

11. List Other State Departments/Agencies Fiscally Affected by this Bill or Amendment:

Tennessee Wildlife Resources Agency (TWRA)

12. List Bills from Previous Sessions which are Identical/Similar to this Bill or Amendment:

- 2007 – SB0784/HB1921
- 2004 – SB3118/HB3428
- 2001 – HB0243/SB1784
- 1999 – HB0819/SB0885
- 1999 – SB0636/HB0959
- 1997 – SB0385/HB1120
- 1997 – SB1009/HB1501
- 1995 – HB0217/SB0470

***Commissioner’s Signature or Designee:**

Boat Titling Proposal

Assumptions:

- Approximately 587,000 vessels held current registrations in 2017.
- | Registrations | class |
|---------------|-----------------------------|
| 295,771 | A - up to 16ft |
| 267,273 | 16ft - in up to 25ft - 11in |
| 17,420 | 26ft up to 39ft - 11in |
| 6,700 | 40ft in length or greater |
- Approximately 44,000 boats were purchased or transferred in 2017.
 - Approximately 84,000 boat renewals in 2017.
 - 5% of all boats receive a duplicate title.
 - 5% of all boats have a new lien each year.
 - 2% of all boats require a new title due to an invalid or destroyed Hull Identification Number (HIN).
 - 10% of all boats would request a voluntary title

Approximate Number of Titles to be issued under Bill 1

	Revenue Division	Transaction Fee (.79)	Production and Mailing	Total
First year:	\$425,188.03	\$257,824.53	\$226,267.53	\$909,280.09
Following years:	\$103,438.03	\$46,373.00	\$36,793.16	\$186,604.19

Approximate Number of Titles to be issued under Bill 2

58,700	Annual cost for revenue employee processing:	\$46,373.00	\$36,793.16	\$186,604.19
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Approximate Number of Titles to be issued under Bill 3

58,700	Initial year cost for revenue employee processing:	\$46,373.00	\$36,793.16	\$186,604.19
4,400	Annual cost for revenue employee processing:	\$3,476.00	\$2,757.92	\$12,555.14

Additional Assumptions:

- For all Bill proposal options, title information will need to be managed in our REAL system, thus requiring a transaction fee per title document entered. We assume this cost will mirror our current transaction fee schedule for boat registrations which is \$0.79.
- The total number of titles required for each of the following years should mirror our current annual registration average which is 44,000.
- For Bill #1, the total number of titles required for the first year will be all boats over 16' and include what we assume will be required for duplications for HIN errors and Liens.
- For Bill #1, we assume an increased labor requirement consisting of 11 temporary employees and 3 permanent employees for the first year with the 3 permanent employees remaining thereafter.
- For Bill #2, we assume an increased labor requirement consisting of 3 permanent employees.
- For Bill #3, we assume an increased labor requirement for only the first year consisting of 3 temporary employees.
- For Bill #3, we assume 10% of customers will volunteer to title their boat.